Report to the Auburn City Council

Action Item	
Agenda Item No.	7
City Manager's Approval	

To: Mayor and City Council Members
From: Wilfred Wong, Community Development Director
Date: March 11, 2013
Subject: Adopt an Updated Community Development Block Grant Program Income Reuse Plan and Business Assistance Loan Program Guidelines

The Issue

Should the City Council adopt an Updated Community Development Block Grant Program Income Reuse Plan and Business Assistance Loan Program Guidelines?

Conclusions and Recommendation

By RESOLUTION, adopt an updated Community Development Block Grant Program Income Reuse Plan and Business Assistance Loan Program Guidelines.

Background/Analysis

The Federal Government recently revised the language requirements to be included in the local jurisdictions CDBG Program Income Reuse Plan. The State Housing and Community Development Department, which oversees the CDBG program for rural non-entitlement jurisdictions in California, now requires an update to existing local Program Income Reuse Plans to reflect these requirements before any of these funds can be used for relending purposes. Also the Business Assistance Loan Program Guidelines are in need of updating. The Council last reviewed and approved the Reuse Plan in June 2009.

The CDBG Program Income Reuse Plan provides a guide for the local jurisdictions regarding the use of CDBG funds. As funds are returned from various program loan projects (housing or economic development), they are deposited in separate revolving accounts for future CDBG eligible projects.

The attached City of Auburn Program Income Reuse Plan meets the updated CDBG program requirements and allocates program income for anticipated uses in the near future. The City of Auburn will have four CDBG revolving loan program income accounts as required. At this time all Program Income will to be allocated back into the Business Assistance account. The four CDBG revolving loan program accounts are:

1. Housing Rehabilitation
2. Homeownership Assistance
3. Business Assistance (business loans)
4. Microenterprise Financial Assistance

Staff is working on two business loans. One loan is being reviewed by State Housing and Community Development staff and approval will be contingent upon approval of the proposed updates.

Alternatives Available to Council; Implications of Alternatives

1. Adopt an Updated Community Development Block Grant Program Income Reuse Plan and Business Assistance Loan Program Guidelines; business loans can continue.

2. Do not adopt an Updated Community Development Block Grant Program Income Reuse Plan and Business Assistance Loan Program Guidelines; business loans cannot continue.

Fiscal Impacts

The City's CDBG Program Income provides for funds to administer the business loan program.

Additional Information

Please see the following for more details:

ATTACHMENTS

1. Resolution adopting updated Community Development Block Grant Program Income Reuse Plan and Business Assistance Loan Program Guidelines.

ATTACHMENT 1

RESOLUTION NO. 13-

RESOLUTION ADOPTING UPDATED COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM INCOME REUSE PLAN AND UPDATED BUSINESS ASSISTANCE LOAN PROGRAM GUIDELINES

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

SECTION 1. The Council has reviewed and hereby agrees to comply with the updated Community Development Block Grant Program Income Reuse Plan (Exhibit A) and Updated Business Assistance Loan Program Guidelines (Exhibit B).

SECTION 2. The City Manager, Community Development Director and Administrative Services Director are hereby authorized and directed to act on the City's behalf in all matters pertaining to the Reuse Plan, including the party responsible for Program Income administration and execution of all documents associated with Program Income.

DATED: March 11, 2013

____
Kevin Hanley, Mayor

ATTEST:

____
Stephanie Snyder, City Clerk

I, Stephanie Snyder, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the City Council of the City of Auburn held on the 11th day of March 2013 by the following vote on roll call:

Ayes:
Noes:
Absent:

____
Stephanie Snyder, City Clerk

EXHIBIT A

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG) PROGRAM INCOME (PI) REUSE PLAN WITH JURISDICTIONAL CERTIFICATIONS

By completing this PI Reuse Plan and signing the end of this document, the Authorized Representative certifies the Jurisdiction has read, understands and will adhere to the Program Income (PI) Reuse Plan detailed in the first section of this document, the PI definitions and rules in the second section of this document, and Department of Housing and Community Development (the Department herein) terms and conditions in the third section of this document.

SECTION ONE: PROGRAM INCOME (PI) REUSE PLAN

JURISDICTION: City of Auburn

GOVERNING BODY ADOPTED ON: March 11, 2013

This PI Reuse plan establishes policies and procedures for the administration and utilization of PI received as a direct result of eligible activities funded under the State of California CDBG Program (Department). All revenue received from CDBG funded activities are required to be used per this adopted plan.

DISTRIBUTION OF PROGRAM INCOME

Introduction: There are six (6) methods of distribution for PI listed below. The four (4) non-Revolving Loan Account obligation methods are optional and can be used on a case- by-case basis as needed for activity funding by the Jurisdiction.

The use of one or more Revolving Loan Account (RLA) is mandatory under this adopted PI Reuse Plan.

The City of Auburn certifies that PI will only be distributed, as follows:

1. **Deposit into Revolving Loan Accounts (RLAs)**

   The following RLAs are hereby established to utilize the City of Auburn PI. *If an RLA activity is not going to be utilized, zero percent (0%) is to be indicated in percentage area below.* One or more of the RLAs will be utilized annually. The allocation of received PI to each RLA is as follows:

A. 0% *(insert percentage, 0 to 100 percent (0%-100%))* of PI received will be deposited into the **Housing Rehabilitation – Single Family (1-4 Units)** Revolving Loan Account **(HR-RLA).**

B. 0% *(insert percentage, 0 to 100 percent (0%-100%))* of PI received will be deposited into the **Homeownership Assistance** Revolving Loan Account **(HA-RLA).**

C. 100% *(insert percentage, 0 to 100 percent (0%-100%))* of PI received will be deposited into the **Business Assistance** Revolving Loan Account **(BA-RLA).**

D. 0% *(insert percentage, 0 to 100 percent (0%-100%))* of received PI will be deposited into the **Microenterprise Financial Assistance** Revolving Loan Account **(ME-RLA).**

2. PI Waiver Activity

The City of Auburn may utilize the Department's PI Waiver process to commit PI to eligible activities that are not considered RLAs. The City of Auburn will follow all PI Waiver procedural requirements as stated in the Program Income chapter of the Grant Management Manual (GMM). The City of Auburn will obtain prior Department approval before expending any PI funds on a Waiver project. A PI Waiver project can only be approved if the total project/program cost for the proposed activity is on hand in the jurisdiction PI account. The City of Auburn understands that PI Waiver activities are limited to two "active" projects and/or programs and will remain active until close out has been completed and approved by the Department.

3. Committal to Funding Application

The City of Auburn may choose to commit non-obligated RLA funds to one or more activities in an annual CDBG application for funding. Committed PI can only be expended when application and activities with committed PI are awarded, contracted, and have all special conditions cleared. PI committed to an application for grant funding must have the PI on hand at the time of application submittal and may not remove or add to the PI amount committed without prior Department approval.

4. Augmenting Funding to An Awarded Activity/Project

City of Auburn may request that the Department allow PI to be added to a funded activity/project due to a funding short fall. To obtain Department approval, the City of Auburn will submit justification to their CDBG Representative outlining in detail the need/reason for the augmentation of funding.

If the Department approves the augmentation (requires a Department contract amendment) the City of Auburn would need to complete a Citizen Participation process before the Department would begin a contract amendment process.

This option only applies to awarded activities/projects and the Department will not approve adding a new activity to an awarded contract.

5. **Fund General Administration (GA) Activities**

The City of Auburn may set aside up to seventeen percent (17%) of PI received from activities funded with CDBG funds for payment of eligible General Administration costs. The City of Auburn may choose to move the GA to eligible CDBG activities, as noted above, but once the funds are removed from the GA account they cannot be put back at a later date.

6. **Return to the Department**

The City of Auburn has the option to return PI back to the Department.

ADMINISTRATIVE PROCESS FOR DISTRIBUTION OF PROGRAM INCOME

CDBG is a federal funding source and requires a Citizen Participation process as part of utilizing any of the six (6) methods of distribution for PI listed above.

Below is how the City of Auburn will conduct the required Citizen Participation process for each of the six (6) distribution methods.

City of Auburn certifies that:

1. The PI Reuse Plan will be formally adopted via public hearing and resolution of Governing Body, executed by Authorized Representative and fully executed by the Department. After the PI Reuse Plan is executed, The City of Auburn reserves the right to set aside up to seventeen percent (17%) of PI received for payment of eligible GA costs. RLA activities which have PI funds being deposited into them may be activated with written Departmental approval.

   The PI Reuse Plan may be amended by the City of Auburn Governing Body to change the distribution percentages in a RLA via public hearing and resolution, and receipt of the Department's written approval.

2. All PI Waiver requests will be submitted for the Department's written approval. After the Department's review of the activity for Eligibility and National Objective compliance\, the PI Waiver will be formally adopted via public hearing and resolution of the Governing Body, as part of the PI Waiver Special Condition Clearance process.

3. PI committed to an open CDBG Contract to augment funding for an activity *or* committed to a pending application for grant funds will be formally adopted via public hearing and approval via resolution for an annual application submittal. Department approval and PI must be on hand.

4. Once a PI Reuse Plan has been executed by the Department, it is then in effect. GA PI funds can then be expended for eligible costs. GA PI funds will not be expended once the Reuse Plan is terminated by either party *or* the Reuse Plan has reached the 5 year expiration.

5. PI will be returned to the Department after a public hearing and formal resolution is passed by the City of Auburn *(Jurisdiction's)* Governing Body.

6. Each of the above administrative processes must be in compliance with the CDBG Citizen Participation process as specified in federal regulations at 24 CFR 570.486, Local Government Requirements.

<u>ADMINISTRATION OF ELIGIBLE ACTIVITIES AFTER DISTRIBUTION</u>

Administration of all CDBG eligible activities conducted under the distribution methods must be conducted in compliance with all current State and federal regulations and policies.

The City of Auburn will follow the Department's guidance for administering RLA activities, PI Waiver activities, or activities funded with PI committed to an open grant contract per the Department's current GMM Chapter regarding PI.

If ineligible activities or costs are paid for with CDBG PI, those funds must be returned to the City of Auburn PI account using local jurisdiction funds.

1. <u>RLA Administration</u>

The City of Auburn certifies that the four RLAs under this PI Reuse Plan will be administered under the following criteria:

A. RLAs with a balance must be "**substantially revolving,**" which means on an annual basis at least 60 percent (60%) of the funds in an RLA must be used for loans which will be repaid to the account. Up to the remaining 40 percent (40%) may be expended on non-revolving activities, which include Activity Delivery (AD), and grants for the same activity as the RLA.

<u>Note</u>: General Administration costs are not considered part of the jurisdiction's RLA Activities and should not be used in the consideration of "substantially revolving".

B. A RLA which is the same activity as any funded open grant activity will be "substantially expended" before grant funds are requested for the grant activity.

The Department considers "**substantially expended**", to mean having no more than $5,000 in a RLA.

C. PI funds shall not be transferred between RLAs after execution of this Plan without following the proper CDBG Citizen Participation process, which includes a public hearing resulting in a certified resolution being submitted to the Department for written approval. However, the transfer of

PI between RLAs each fiscal year, in the aggregate amount of $5,000 or less, is not be subject to the Citizen Participation requirement, as stated above; but <u>does</u> require prior written Department approval.

D. All PI funded activities shall be provided to project activities located within the boundaries of the City of Auburn.

If an additional jurisdiction(s) receives benefit, a Joint Power's Agreement (JPA) between Jurisdictions(s) is required. The City of Auburn must receive written approval from the Department prior to implementation and prior to parties execution of the JPA between the parties.

E. The City of Auburn will submit program guidelines specific to each RLA activity for written Department approval. Once approval is issued to the Jurisdiction, the RLA will then be deemed active.

F. This PI Reuse Plan will not be executed by the Department until all RLAs have clear distribution percentages listed above, and have Department approved program guidelines.

All CDBG PI Reuse Plans are limited to a five (5) year term from the date of execution.

PI funds within an RLA cannot be expended until this PI Reuse Plan is executed.

G. Reporting on RLAs and other PI Activities will be required per the Department's current policies, including financial accounting of PI received and expended for RLAs and other PI Activities. Additionally, PI performance (National Objective data and beneficiary demographics) reported as HUD required accomplishment information will be required to be submitted in a timely manner or the City of Auburn understands that it will be required to repay a PI account for ineligible cost or activities.

H. AD costs are **<u>only eligible</u>** if one or more projects are funded and accomplishments (such as beneficiaries), for those activity(ies), on an annual basis, are reported on.

2. <u>Eligible RLA Activities</u>

The four (4) RLA(s) listed below each have a single eligible CDBG program activity. The City of Auburn certifies that all CDBG rules pertaining to each eligible activity will be followed.

A. <u>Housing Rehabilitation Revolving Loan Account</u>

The CDBG eligible activity under this RLA is a single-family housing rehabilitation program. The program will be used for the purpose of making loans to rehabilitate residential units (1-4 units), occupied by income eligible households. The CDBG national objective of benefit to Low/Moderate-income (Low/Mod) households will be met by limiting program participants to households that have an annual income at or below eighty percent (80%) of HUD median income limits for Placer County. Households will be income qualified based on the income calculation method specified in 24 CFR Part 5, and in accord with the Department's Income Manual.

Rehabilitation of "projects" (five (5) or more units on one site) is not allowed under this RLA. Projects with five or more units must be funded via the annual grant process or through the PI Waiver process.

Jurisdictions wishing to include tenant occupied projects for the Housing Rehabilitation program must submit separate (distinguishable from the Owner Occupied Housing Rehabilitation guidelines) guidelines outlining the unique tenant occupied rules and processes.

The review and funding of requests for CDBG loans or grant assistance under this RLA shall be conducted under the Housing Rehabilitation Program Guidelines that have been adopted by the City of Auburn and approved in writing by the Department.

No more than 19 percent (19%) of program funds expended from this RLA shall be used for AD costs.

B. Homeownership Assistance (Homebuyer) Revolving Loan Account

The CDBG eligible activity under this RLA is acquisition of single family housing. The program will be used for the purpose of making loans to assist income eligible homebuyers to purchase a residential property (1-4 units). The CDBG national objective of benefit to Low/Mod-income households will be met by limiting program participants to households that have an annual income at or below eighty percent (80%) of HUD median income limits. Households will be income qualified based on income calculation method specified in 24 CFR Part 5 and in accord with the Department's Income Manual.

The review and funding of requests for CDBG loans or grant assistance under this RLA shall be conducted under the Homeownership Assistance Program Guidelines that have been adopted by the City of Auburn and approved in writing by the Department.

No more than 8 percent (8%) of the funds expended from this RLA shall be used for AD costs.

C. Business Assistance Revolving Loan Account

The CDBG eligible activity of Special Economic Development will be conducted under this RLA. Specifically, the RLA will fund a business assistance program that provides direct financial assistance for eligible businesses that propose projects which create or retain permanent jobs. The CDBG national objective being met by the Special Economic Development activity will typically be benefit to Low/Mod-income persons.

As such, at least fifty one percent (51%) of the full time job positions created or retained will be made available to persons whose households have an annual income at or below 80 percent (80%) or less of the Placer County median income. Income eligibility is based on the income calculation method specified in 24 CFR Part 5, and in accord with the Department's Income Manual.

Business assistance projects under this RLA program may also meet the national objective of elimination of slums and blight, but this must be approved by the Department in writing as part of the initial business's loan application.

Local review and underwriting of business assistance projects requesting a CDBG loan under this RLA shall be conducted under the Business Assistance Program Guidelines that have been adopted by City of Auburn and approved in writing by the Department.

Each individual project funding request made under this RLA program must be submitted for Department review and written approval, prior to closing the loan.

No more than 15 percent (15%) of the total funds expended for business assistance activities shall be used for AD costs.

D. <u>Microenterprise Assistance Revolving Loan Account</u>

The CDBG eligible activity of direct financial assistant to eligible microenterprise businesses will be conducted under this RLA. Specifically, the RLA will fund a microenterprise direct financial assistance program that provides financial assistance to start up or existing microenterprise businesses. Eligible businesses must meet the HUD definition of microenterprise. A microenterprise is defined as a business that has five (5) or fewer employees including the owner(s). The only CDBG national objective which will be used for this activity is benefit to Low/Mod-income households. As such, micro business owners assisted under this program must be documented as having an annual household income at or below 80 percent (80%) of the jurisdiction's county median income, based on income calculation method specified in 24 CFR Part 5, and in accord with the Department's Income Manual.

Local review and underwriting of microenterprise business assistance projects requesting a CDBG loan or grant under this RLA shall be conducted under the Microenterprise Financial Assistance Program Guidelines that have been adopted by the City of Auburn and approved in writing by the Department.

Each individual project funding request made under this RLA program must be submitted for Department review and written approval, prior to closing the loan.

No more than 15 percent (15%) of the total funds expended for business assistance activities shall be used for AD costs.

3. **Administration of Non-RLA Program Income Expenditures**

A. **Program Income Waiver Eligible Activities**

City of Auburn certifies that the PI Waiver Submission Process below will be followed if a PI Waiver is to be requested:

1) This process will involve discussion at a properly noticed public hearing, held in front of the governing body, and submission of a Certified Resolution as part of a PI Waiver Request to the Department, in accordance with current Department policy, and any subsequent policy, regulation, or statutory-guidance, in writing, from The Department.

2) Final commitment and expenditure of PI Waiver funds will not commence until clearance of all required Special Conditions have been met, and written Department approval has been issued to the City of Auburn.

3) Reporting on PI Waiver activities will take place per current Departmental policies and include financial accounting of PI received and expended for PI Waivers and PI Waiver activity performance.

4) PI Waiver activities must be fully funded with program income already on hand. Therefore, future PI may not be pledged to the PI Waiver activity.

5) Only two (2) PI Waiver agreements may be open and active at any one time.

B. **Program Income Committed in an Annual Grant Application and Included in an Open Grant Agreement**

City of Auburn certifies that the PI Committed to a funded Annual CDBG Application will be:

1) Funded with PI currently on hand

Future PI may not be pledged to an open grant activity.

2) Expended first and prior to requesting grant funds

3) Administered in accordance with terms and conditions of the grant contract with the Department

4) Reported using the Department's current PI and fiscal reporting forms. All PI activity performance data will be reported using grant and fiscal reports.

C. Program Income Added to an Existing Open Grant

City of Auburn certifies that the PI committed to an existing CDBG Grant will be:

1) Understands that it requires approval by the Department and a Grant Amendment before PI can be committed to a grant activity.

2) Funded with PI currently on hand.

   Future PI may not be pledged to an open grant activity.

3) Expended first and prior to requesting grant funds.

4) Administered in accordance with terms and conditions of the grant contract with the Department.

5) Reported using the Department's current PI and fiscal reporting forms. All PI activity performance data will be reported using grant and fiscal reports.

4. General Administration (GA) Cost Limitation and Activities

City of Auburn certifies that no more than seventeen (17%) percent of the total amount of PI received annually will be expended for GA costs. These funds will accumulate annually and be carried from one fiscal year to the next if unexpended.

If more funds are expended than what is available in GA, the Jurisdiction will be required to return the over-expended GA amount back into their PI Account. *Additionally, any ineligible GA costs will also be required to be returned to their PI Account.*

GA eligible costs for PI are the same as open grant agreements with the Department. See the current CDBG Grant Management Manual (GMM) for list of eligible activities and allowable costs.

GA activity costs will be reflected on fiscal reports submitted to the Department as per current reporting forms and policies.

A. Planning Activities

The City of Auburn reserves the option of utilizing PI, within the 17 percent (17%) GA annual cap to fund planning studies for CDBG eligible activities.

All proposed planning activities must receive written Department approval prior to expending PI on the activity.

Eligible planning activities funded with PI are the same as open grant agreements with the Department. See current NOFA for a list of eligible planning studies.

All planning activities must have a final product (report or study) resulting from the expenditure of PI.

Upon completion of the planning activity, the study must be formally accepted by the Jurisdiction and submitted to the Department for review.

The planning activity costs will be reflected on fiscal reports submitted to the Department.

B. Loan Portfolio and Asset Management Policies and Costs

The City of Auburn certifies that it has asset management policies and loan portfolio servicing policies that are in compliance with HUD standards per 24 CFR Part 570. The use of CDBG funds creates public financial assets. The public financial assets created can be in the form of loans or other repayment instruments which result in PI. Financial assets may also be in the form of real property or chattel (equipment and fixtures). All assets created from the use of CDBG funds must be administered in compliance with OMB Circulars A-87, A-122 A-133, 24 CFR Part 85.

Loan payment tracking and collection systems must be put in place for collection purposes of all loans funded with CDBG. In addition, loan servicing policies and procedures must be in place to service the loan assets, ensuring repayment.

Costs of managing the portfolio of CDBG funded loans may be charged to PI under GA within the allowable limits set by the Department.

SECTION TWO: JURISDICTION ASSERTIONS AND CERTIFICATIONS

1. Requirements of Program Income

The PI Reuse Plan is intended to satisfy the requirements specified in federal statute and regulation at Section 104(j) of the Housing and Community Development Act ("the Act"), as amended in 1992 and 24 CFR 570.489(e) and (f). These statutory and regulatory sections permit a unit of local government to retain PI for CDBG-eligible community development activities. Under federal guidelines adopted by the State of California's CDBG Program, local governments are permitted to retain PI as long as the local government has received advance approval from the State of a local plan that will govern the expenditure of the PI. This plan has been developed to meet that requirement.

City of Auburn certifies that the City of Auburn PI will be used to fund eligible CDBG activities that meet a national objective and any public benefit requirements. Eligible activities, national objective and public benefit requirements are specified in Federal Statute at Sections 104(b), 105(a) of The Housing and Community Development Act of 1974, and in Federal Regulations at 24 CFR 570.482 and 24 CFR 570.483. The Jurisdiction understands, if it is determined that an activity/project funded with PI that does not meet a national objective and/or meet the public benefit requirement, the City of Auburn will be required to use its own local funds to repay the PI Account.

2. **<u>Definition of Program Income</u>**

"Program Income" means gross income earned by the Jurisdiction from grant-funded activities and is subject to CDBG regulatory requirements pursuant to 24 CFR, Part 570.489(e) - Program Administrative Requirements as amended in the CDBG Final Rule, 24 CFR, Part 570.504 - Program Income, 24 CFR Part 85 – Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments, and OMB Circulars A-87 and A-122 as applicable. These regulations include the requirement that the Jurisdiction record the receipt and expenditure of PI as part of the financial transactions of the grant activity(ies).

For activities generating PI that are only partially funded with CDBG funds, such income is prorated to reflect the actual percentage of CDBG participation. <u>Examples of PI include but are not limited to</u>: payments of principal and interest on housing rehabilitation or business loans made using CDBG funds; interest earned on PI pending its disposition; interest earned on funds that have been placed in a revolving loan account; net proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds; and, income (net of costs that are incidental to the generation of the income) from the use or rental of real property that has been acquired, constructed or improved with CDBG funds and that is owned (in whole or in part) by the participating jurisdiction or sub-recipient.

3. **<u>Federal Nature of Program Income</u>**

City of Auburn certifies that per 24 CFR 570.489(e)(2)(i), as amended in the CDBG Final Rule May 23, 2012, all PI received through a RLA, will be counted as PI regardless of the amount, and all PI generated through an open grant that is $35,000 or less may either be:

A. Counted and reported as PI, allowing the Jurisdiction to include that amount in its PI GA (17%) calculation; or,

B. Not counted as PI and reported as such, which "de-federalizes" the funds, and allows them to be deposited into the Jurisdiction's General Fund. Supporting accounting records and documentation must be in the Jurisdiction's file to substantiate the calculations reported.

If PI is generated from a loan that is made partially from a RLA and partially from another source, then the PI accounting and reporting must reflect the correct amounts and proportions of PI from the RLA (counted and reported as PI Income) versus the amount generated from the other source, which may be accounted for and reported using either of the methods above.

4. **<u>Definition of Excessive Program Income</u>**

City of Auburn certifies that if there is excessive PI ($500,000 or more), which includes GA, at the end of the fiscal year they will be required to submit a plan (included in the Reporting form) for expending the funds to the Department for review and approval. The City of Auburn understands that if no plan is submitted, or the plan is not approved by the Department, it risks having to return the PI to the Department. The City of Auburn agrees to use the Semi Annual PI Report forms to describe the reason(s) for the excessive amount and the method(s)/plan(s)/reason(s) the City of Auburn will use to reduce the amount over the coming year.

Should the jurisdiction chooses to 'accumulate' PI to fund a project that will cost more than $500,000, the Jurisdiction must identify the project in their Semi Annual PI Report form with a detailed narrative about the project and the expected timing for the project to start and end. Approval of a PI balance above $500,000 will be made on a case-by-case basis.

5. **Reporting of Program Income**

City of Auburn certifies that CDBG PI will be accounted for using the Department's fiscal year (July 1 to June 30). All receipts and expenditures of PI in accordance with this PI Reuse Plan will be monitored and reported per the Department's fiscal year cycle. The City of Auburn certifies that they will report using the Department's reports/forms and will submit them in a timely manner.

6. **Duration of This Program Income Reuse Plan**

City of Auburn and the City Council *(Jurisdiction Governing Body)* understand that this document is effective for five (5) years from the execution date by the authorized CDBG representative listed in this Agreement unless otherwise notified by the Department. The Department has the Authority to void the Agreement with notice for cause.

7. **Status of Program Income Upon Leaving State Non-Entitlement CDBG Program and Entering the CDBG Entitlement Program**

City of Auburn certifies that the City Council *(Jurisdiction Governing Body)* may move the PI earned under the State program to the Entitlement Program if/when the Jurisdiction is authorized and chooses to participate in the CDBG Entitlement Program provided the City Council *(Jurisdiction Governing Body)* certifies that the City of Auburn has:

A. Officially elected to participate in the Entitlement Grant Program;

B. Agrees to use such PI in accordance with Entitlement Program requirements; and,

C. Sets up Integrated Disbursement Information System (IDIS) access and agrees to enter receipt of PI into IDIS.

The City of Auburn submits the above to the State and receives the Department's approval to no longer report State CDBG PI to the Department.

8. **Status of Program Income Upon Entering the State Non-Entitlement CDBG Program from the Entitlement CDBG Program**

City of Auburn certifies that the City Council *(Jurisdiction Governing Body)* will inform the Department in writing of the Jurisdiction's decision to either:

A. Retain program income generated under Entitlement grants and continue to comply with Entitlement program requirements for program income; or

B. Retain the program income and transfer it to the State CDBG program, in which case the Jurisdiction will certify that it will comply with the state's rules for program income and the requirements of 24 CFR 570.489(e) and (f).

9. **Amendment of PI Reuse Plan**

City of Auburn certifies that it will adopt and submit for Department written approval a new version of this plan as updates are released by the Department.

SECTION THREE: DEPARTMENT TERMS, CONDITIONS AND AUTHORIZATION

TERMS AND CONDITIONS: City of Auburn certifies that all terms and conditions listed below have been read and understood, and will be implemented and followed:

1. **Authority & Purpose**

This Agreement provides official notification of the Jurisdiction's PI Reuse Plan's (hereinafter, "PI Reuse Plan") approval under the State's administration of the Federal Community Development Block Grant Program (hereinafter, "CDBG" or "the Program") for Non-entitlement jurisdictions pursuant to the provisions of 42 U.S. Code (U.S.C.) 5301 et seq., 24 Code of Federal Regulations (CFR) Part 570, Subpart I, and 25 California Code of Regulations (CCR), Sections 7050 et seq. The Program is listed in the Catalog of Federal Domestic Assistance as 14.228 - CDBG Community Development Block Grant Program.

In accepting the PI Reuse Plan Approval, the Jurisdiction agrees to comply with the terms and conditions of this Agreement, all exhibits hereto and the representations contained in the Jurisdiction's PI Reuse Plan. Any changes made to the PI Reuse Plan after this Agreement is accepted must receive prior written approval from the Department of Housing and Community Development (Department).

2. **Distribution for Reuse of PI**

A. The Jurisdiction shall perform PI funded activities as described in the Distribution for Reuse in the PI Reuse Plan. All written materials or alterations submitted as addenda to the original PI Reuse Plan and which are approved in writing by the Department are hereby incorporated as part of the PI Reuse Plan.

The Department reserves the right to require the Jurisdiction to modify any or all parts of the PI Reuse Plan in order to comply with CDBG requirements. The Department reserves the right to review and approve all work to be performed by the Jurisdiction in relation to this Agreement. Any proposed revision to the work must be submitted in writing for review and approval by the Department and may require an amendment to this Agreement. Approval shall not be presumed unless such approval is made in writing by the Department.

B. The PI funded activities shall principally benefit Low/Mod-income persons or households (Low/Mod) whose income is no more than 80 percent (80%) of the median area income.

3. **<u>Sufficiency of Funds and Termination</u>**

The Department may terminate this Agreement at any time for cause by giving at least 14 days written notice to the Jurisdiction. Termination shall consist of violations of any terms and/or special conditions of this Agreement, upon the request of HUD, or withdrawal of the Department's expenditure authority.

4. **<u>Meeting National Objectives</u>**

All activities performed under this Agreement must meet one of the national objectives determined by the HUD regulations as included in the Application authorized under Title I of the Housing and Community Development Act of 1974, as amended.

A. Benefit to HUD defined Low/Mod-income person or household (LMI). The term Low/Mod-income is defined under CDBG as no more than 80 percent (80%) of the median area income, as determined by HUD, per Federal Regulation 24 CFR, Part 570.483(b); and/or;

B. Prevention or elimination of slums or blight. In order for an activity to meet the national objective of elimination of slums and blight, the activity must take place in an area that meets the definition of a blighted area and the project must be shown to eliminate blight or prevent further blight per Federal Regulation 24 CFR, Part 570.483(c).

C. For Microenterprise Assistance activities, the Jurisdiction must only meet the benefit to Low/Mod-income person or household (LMI) national objective.

5. **<u>Inspections of Activities</u>**

A. The Department reserves the right to inspect any activity(ies) performed hereunder to verify that the activity(ies) is in accordance with the applicable federal, State and/or local requirements and this Agreement.

B. The Jurisdiction shall inspect any activity performed by contractors and subrecipients hereunder to ensure that the activity(ies) is in accordance with the applicable federal, State and/or local requirements and this Agreement.

The Jurisdiction agrees to require that all activity(ies) found by such inspections not to conform to the applicable requirements be corrected, and to withhold payment to its contractor or subcontractor, respectively, until it is so corrected.

6. **Insurance**

The Jurisdiction shall have and maintain in full force and effect during the term of this Agreement such forms of insurance, at such levels as may be determined by the Jurisdiction and the Department to be necessary for specific components of the activity(ies) described in this Reuse Plan.

7. **Contractors and Subrecipients**

A. The Jurisdiction shall not enter into any agreement, written or oral, with any contractor or subrecipient without the prior determination that the contractor or subrecipient is eligible to receive CDBG funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors. To determine if a contractor or subrecipient is eligible to receive CDBG funds, you can conduct a search on the Excluded Parties List System at www.epls.gov .

1) Contractors are defined as program operators or construction contractors who are procured competitively.

2) Subrecipients are defined as public or private non-profit agencies or organizations and certain (limited) private for-profit entities who receive CDBG funds from an awarded jurisdiction to undertake eligible activities.

B. An agreement between the Jurisdiction and any contractor or subrecipient shall require:

1) Compliance with the applicable State and federal requirements of this Agreement, which pertain to, among other things, labor standards, non-discrimination, Americans with Disabilities Act, Equal Employment Opportunity, and Drug-Free Workplace; and, Compliance with the applicable provisions relating to Labor Standards/Prevailing Wages. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.

2) Maintenance of, at minimum, the State-required Workers' Compensation Insurance for those employees who will perform the activity(ies) or any part of it.

3) Maintenance of, if so required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the activity(ies) or any part of it.

4) Compliance with the applicable Equal Opportunity Requirements described in this Agreement.

C. Contractors shall:

1) Perform the activity(ies) in accordance with federal, State and local housing and building codes, as are applicable.

2) Provide security to assure completion of the project by furnishing the borrower and construction lenders with Performance and Payment Bonds, or other security approved in advance in writing by the Department.

D. Subrecipients shall:

1) Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a period of five (5) years from date of termination of this Agreement, or five (5) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement, and any amendments, whichever is later.

2) Permit the State, federal government, the Bureau of State Audits, the Department and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to the agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

8. <u>Obligations of the Jurisdiction with Respect to Certain Third Party Relationships</u>

The Jurisdiction shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Activities funded under this agreement with respect to which assistance is being provided under this Agreement to the Jurisdiction.

The Jurisdiction shall comply with all lawful requirements of the Department necessary to ensure that the Program, with respect to which assistance is being provided under this Agreement to the Jurisdiction, is carried out in accordance with the Department's Assurance and Certifications, including those with respect to the assumption of environmental responsibilities of the Department under Section 104(g) of the Housing and Community Development Act of 1974.

9. **Periodic Reporting Requirements**

During the term of this Agreement, the Jurisdiction must submit the following reports by the dates identified, respectively, or as otherwise required at the discretion of the Department. The Jurisdiction's performance under this Agreement will be based, in part, on whether it has submitted the reports on a timely basis.

A. Semi-Annual PI Expenditure/Performance Report: Submit by January 31 and July 31 of each year regardless of whether or not the Jurisdiction has any unspent PI. PI Waivers or open Grants with no accomplishment are not excluded to the reporting requirement.

B. Annual Federal Overlay Reporting: Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State Fiscal Year. Annual Reporting includes but is not limited to: Section 3, and Minority Owned Business/Women Owned Business (MBE/WBE).

C. Wage Compliance Reports: Semi-annual Wage Compliance Reports are to be submitted by October 7 and April 7 during the entire construction period. The final Wage Compliance Report is to be submitted thirty (30) days after construction is completed.

D. Any other reports that may be required as a Special Condition of this Agreement.

10. **Monitoring Requirements**

The Department shall perform a program and/or fiscal monitoring of the activity(ies). The Jurisdiction shall be required to resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department. If findings are not adequately resolved in a timely manner, the Department may deduct points from the Jurisdiction's performance score on future applications.

Additionally, the Department reserve the right to suspend a jurisdiction's authority to expend PI (Waiver, RLA and/or PI attached to an open grant) based on significant compliance issues, reporting concerns or serious lack of cooperation in clearing PI monitoring findings.

11. **Signs**

If the Jurisdiction places signs stating that the Department is providing financing, it shall indicate in a typeface and size commensurate with the Department's funding portion of the project that the Department is a source of financing through the CDBG Program.

12. **Audit/Retention and Inspection of Records**

A. The Jurisdiction must have intact, auditable fiscal records at all times. If the Jurisdiction is found to have missing audit reports from the SCO during the term of this Agreement, the Jurisdiction will be required to submit a plan to the State, with task deadlines, for submitting the audit to the SCO. If the deadlines are not met, the Jurisdiction will be subject to termination of this Agreement and disencumbrance of the funds awarded. The Jurisdiction's audit completion plan is subject to prior review and approval by the Department.

B. The Jurisdiction agrees that the Department or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Jurisdiction agrees to provide the Department or its designee with any relevant information requested and shall permit the Department or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq. The Jurisdiction further agrees to maintain such records for a period of five (5) years after final payment under this Agreement. The Jurisdiction shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC 10115.10.

C. An expenditure which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Jurisdiction.

D. Absent fraud or mistake on the part of the Department, the determination by the Department of the allowability of any expenditure shall be final.

E. For the purposes of annual audits under OMB Circular A-133 (The United States Office of Management and Budget Circular for Audits of States and Local Governments), Jurisdiction shall use the Federal Catalog Number 14.228 for the State CDBG Program.

F. Notwithstanding the foregoing, the Department will not reimburse the Jurisdiction for any audit cost incurred after the expenditure deadline of this Agreement.

G. The jurisdiction understands that the expenditure of PI is covered under the OMB A-133 Single Audit Requirements and will meet all these requirements and report said PI Expenditure along with grant funds each fiscal year.

13. <u>Conflict of Interest of Members, Officers, or Employees of Contractors, Members of Local Governing Body, or other Public Officials</u>

Pursuant to 24 CFR 570.611, no member, officer, or employee of the Jurisdiction, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter. The Jurisdiction shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this Section.

14. Waivers

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement or to require at any time performance by the Jurisdiction of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

15. Litigation

A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.

B. The Jurisdiction shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

16. Lead-Based Paint Hazards

Activity(ies) performed with assistance provided under this Agreement are subject to lead-based paint hazard regulations contained in Title 8 (Industrial Relations) and Title 17 (Public Health) of the CCR and 24 CFR, Part 35 (Lead Disclosure). Any grants or loans made by the Jurisdiction with assistance provided under this Agreement shall be made subject to the provisions for the elimination or mitigation of lead-based paint hazards under these Regulations. The Jurisdiction shall be responsible for the notifications, inspections, and clearance certifications required under these Regulations.

17. Prevailing Wages

A. Where funds provided through this Agreement are used for construction work, or in support of construction work, the Jurisdiction shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.

B. For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Jurisdiction and a licensed building contractor, the Jurisdiction shall serve as the "awarding body" as that term is defined in the LC. Where the Jurisdiction will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

18. <u>Compliance with State and Federal Laws and Regulations</u>

A. The Jurisdiction agrees to comply with all State laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Jurisdiction, its subcontractors, contractors or subcontractors, and the Reuse activity(ies), and any other State provisions as set forth in this Agreement.

B. The Jurisdiction agrees to comply with all federal laws and regulations applicable to the CDBG Program and to the activity(ies), and with any other federal provisions as set forth in this Agreement.

19. <u>Anti-Lobbying Certification</u>

The Jurisdiction shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this activity(ies) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and no more than $100,000 for such failure.

"The undersigned certifies, to the best of his or her knowledge or belief, that:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; and,

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions."

20. <u>Bonus or Commission, Prohibition Against Payments of</u>

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

A. Obtaining the Department's approval of the Application for such assistance; or,

B. The Department's approval of the Applications for additional assistance; or,

C. Any other approval or concurrence of the Department required under this Agreement, Title I of the Housing and Community Development Act of 1974, or the State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

21. <u>Citizen Participation</u>

The Jurisdiction is subject to the requirements concerning citizen participation contained in Federal Regulations at 24 CFR, Part 570.486, Local Government Requirements, Part 91.105 and 91.115.

22. <u>Clean Air and Water Acts</u>

This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR, Part 15, as amended from time to time.

23. <u>Conflict of Interest of Certain Federal Officials</u>

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same. The Jurisdiction shall report all perceived or actual conflicts of interest cases to the State for review before financial benefits are given.

24. Environmental Requirements

The Jurisdiction shall comply with the provisions of the National Environmental Policy Act (NEPA) by following the procedures contained in 24 CFR, Part 58. The Jurisdiction shall not undertake any activity that would have an adverse environmental impact or limit the choice of reasonable alternatives under 24 CFR, Part 58.22 until HUD or the Department has issued an environmental clearance.

25. Equal Opportunity

A. The Civil Rights, Housing and Community Development, and Age Discrimination Acts Assurances

During the performance of this agreement, the Jurisdiction assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, religion, familial status, or religious preference, under any activity funded by this Agreement, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, the Age Discrimination Act of 1975, the Fair Housing Amendment Act of 1988, and all implementing regulations.

B. Rehabilitation Act of 1973 and the "504 Coordinator":

The Jurisdiction further agrees to implement the Rehabilitation Act of 1973, as amended, and its regulations, 24 CFR, Part 8, including, but not limited to, for Jurisdiction's with fifteen (15) or more permanent full or part time employees, the local designation of a specific person charged with local enforcement of this Act, as the "504 Coordinator."

C. The Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance

1) The activity(ies) to be performed under this Agreement are subject to the requirements of Section 3 of the HUD Act of 1968, as amended, 12 U.S.C. 1701u. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in the order of priority provided in 24 CFR, Part 135.34(a)(2).

2) The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

3) The Jurisdiction will include these Section 3 clauses in every contract and subcontract for Work in connection with the activity(ies) and will, at the direction of the Department, take appropriate action pursuant to the contract or subcontract upon a finding that the Jurisdiction or any contractor or subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR, Part 135 and, will not let any contract unless the Jurisdiction or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

4) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this Agreement shall be a condition of the federal financial assistance provided to the activity(ies), binding upon the Jurisdiction, its successors, and assigns. Failure to fulfill these requirements shall subject the its contractors and subcontractors and its successors, to such sanctions as are specified by 24 CFR, Part 135 and those sanctions specified by this Agreement.

D. <u>Assurance of Compliance with Requirements Placed on Construction Contracts of $10,000 or More</u>

The Jurisdiction hereby agrees to place in every contract and subcontract for construction exceeding $10,000 the Notice of Requirement for Affirmative Action to ensure Equal Employment Opportunity (Executive Order 11246), the Standard Equal Employment Opportunity, and the Construction Contract Specifications. The Jurisdiction furthermore agrees to insert the appropriate Goals and Timetables issued by the U.S. Department of Labor in such contracts and subcontracts.

26. <u>Flood Disaster Protection</u>

A. This Agreement is subject to the requirements of the Flood Disaster Protection Act (FDPA) of 1973 (Public Law 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under FDPA, Section 3 (a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to FDPA, Section 102(d) of said Act.

B. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of FDPA, Section 102(a) of said Act.

C. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain certain provisions. These provisions will apply if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.

D. These provisions shall obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under FDPA, Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

27. Federal Labor Standards Provisions

The Jurisdiction shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of:

A. Davis-Bacon Act (40 U.S.C. 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over $2,000.

B. "Anti-Kickback Act of 1986" (41 U.S.C. 51-58) prohibits any person from (1) providing, attempting to provide, or offering to provide any kickback; (2) soliciting, accepting, or attempting to accept any kickback; or (3) including directly or indirectly, the amount of any kickback prohibited by clause (1) or (2) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.

C. Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. 3702) requires that workers receive "overtime" compensation at a rate of one to one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.

D. Title 29, Code of Federal Regulations CFR, Subtitle A, Parts I, 3 and 5) are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

The Jurisdiction shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Department for review upon request.

28. **Procurement**

The Jurisdiction shall comply with the procurement provisions in 24 CFR, Part 85.36: Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.

29. **Non-Performance**

The Department shall review the actual National Objective and/or Public Benefit achievements of the Jurisdiction. In the event that the National Objective and/or Public Benefit requirements are not met, the Department will require the recapture of the entire PI expended on that project/activity. Additional remedies may include suspending the jurisdiction authority to use PI funds until the jurisdiction has developed capacity to ensure future PI funds will be used for eligible activities that will meet a National Objective.

30. **Relocation, Displacement, and Acquisition**

The provisions of the Uniform Relocation Act, as amended, 49 CFR, Part 24, and Section 104(d) of the Housing and Community Development Act of 1974 shall be followed where any acquisition of real property is carried out by the Jurisdiction and assisted in whole or in part by funds allocated by CDBG.

31. **Uniform Administrative Requirements**

The Jurisdiction shall comply with applicable Uniform Administrative Requirements as described in 24 CFR, Section 570.502, including cited Sections of 24 CFR, Part 85.

32. **Section 3**

The Jurisdiction will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing Regulations at 24 CFR, Part 135.

33. **Affirmatively Furthering Fair Housing**

The Jurisdiction will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

34. **General Contract Conditions**

The following conditions apply to all activities, including set aside activities. The Jurisdiction must meet the conditions within ninety (90) days of this Agreement's execution. Failure to meet the following Special Conditions may result in termination of this Agreement.

A. Environmental Compliance

The Jurisdiction shall have satisfied all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements. CEQA shall be approved by the Jurisdiction. The level of compliance varies by activity. NEPA review must be completed by the Jurisdiction for each activity and approved in writing by Department staff prior to incurring costs on the activity(ies).

B. Acquisition/Relocation Compliance

The Jurisdiction must document its compliance with the Uniform Relocation Act, Section 104(d) before release of funds by the Department. The Jurisdiction must submit a specific relocation assistance plan for each activity which may result in temporary or permanent displacement. For projects where there will be temporary or permanent displacement, the Jurisdiction must submit signed General Information Notices (GINs) from each tenant who was residing in the project at the time of Application submittal. If the Jurisdiction believes that there will be no displacement as a result of their activities, they must submit a letter explaining why no displacement or relocation will occur, which will be subject to written approval by the Department.

C. Site Control

The Jurisdiction shall demonstrate site control of the proposed project property by submitting evidence of one or more of the following to the Department:

1) Fee title;

2) A leasehold interest on the project property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit compliance with all Program requirements;

3) An option to purchase or lease;

4) A disposition and development agreement with a public agency;

5) A land sale contract, or other enforceable agreement for the acquisition of the property; or,

6) All easements and right-of-ways (required for completion of the CDBG project) must be obtained.

D. Funding Commitments and Project Cost Estimates

All funding required for project completion must be documented and committed. If all funding is not committed, the Department shall terminate this Agreement. If the Jurisdiction has applied for other funding prior to the execution of this Agreement, the Jurisdiction must notify the Department as soon as that application is approved or denied. If the Jurisdiction must apply for other funding after the execution date of this Agreement, the Jurisdiction must apply at the earliest possible opportunity offered by the other funding source(s) and notify the Department as soon as that application is approved or denied.

A current third-party cost estimate must be provided by the engineer or architect for the project.

E. <u>Activity Administration Documentation</u>

There are four methods of administering and/or completing RLA activities:

1) Use of in-house staff only;

2) Subrecipient agreement(s) with qualified non-profit(s);

3) Consultants/contractors/others obtained through federal procurement procedures; or,

4) Any combination of the above methods.

The Jurisdiction must provide the following documentation demonstrating that one or more of these methods were used for the GA of the RLA and for all activities carried out under this Agreement.

1) <u>Use of in-house staff only</u>: If not previously provided in the Application, submit staff resumes and duty statements that clearly identify that Jurisdiction staff has capacity and experience to complete administration of the proposed activities in the Application.

2) <u>Subrecipient agreement(s) with qualified non-profit(s)</u>: Subrecipients, and their respective agreements with the Jurisdiction must adhere to all Program requirements. Submit the subrecipient agreement that was executed between the non-profit and the County of Colusa. (Submitting draft documents for review prior to execution is recommended.) The scope of work in the subrecipient agreement must match the description of activity in this Agreement. Any parts of the activity description in this Agreement not covered by the subrecipient agreement must have separate procurement information. If the subrecipient is using CDBG funds to hire other consultants or subrecipients to do part or all of the Work then the procurement documentation or additional subrecipient agreements must be provided to the Department for review and approval.

3) Consultants: Submit procurement documentation that all third-party consultants are procured in accordance with Federal Procurement Procedures and the Grant Management Manual, as follows:

A copy of the document used to notify prospective consultants, such as a Request for Proposal or similar document.

A list of all bid respondents, showing respondents' contact information and the dollar amount of each proposal.

A brief description of the process used to select the consultant/ contractor/other, including the rationale for the selection.

Additional information may be found in the Grant Management Manual, Program Operators.

F. Compliance With All Loans and/or Grant Agreements

Pursuant to this Agreement, the Jurisdiction must comply with State and Federal Laws and Regulations that pertain to matters applicable to the Jurisdiction. Prior to disbursement of any funds under this Agreement, the Jurisdiction shall be in compliance with all loan and/or grant agreements to which it is a party, which are administered by the Department.

G. Easements and Rights-of-Way

If required for the completion of a CDBG project, the Jurisdiction must obtain all easements and rights-of-ways required for completion of the CDBG project within twelve (12) months of execution of this Agreement. Failure to obtain these may result in termination of this Agreement.

H. Section 504 Accessibility Requirements

1) Section 504 Regulations apply when CDBG funds are used on a new construction housing or public facility project or when an existing public facility or housing project with fifteen (15) or more units is being purchased and/or "substantially" rehabilitated. Qualified CDBG assisted housing projects are required to have a certain percentage of the units designed for and accessible to persons with mobility and sensory impairments.

2) For a federally assisted new construction housing project, Section 504 requires five percent (5%) of the dwelling units, or at least one unit, whichever is greater, to meet Uniform Federal Accessibility Standards or a standard that is equivalent or stricter, for persons with mobility disabilities. An additional two percent (2%) of the dwelling units, or at least one unit, whichever is greater, must be accessible for persons with hearing or visual disabilities.

3) Under Section 504, alterations are substantial (i.e. substantially rehabilitated) if they are undertaken to a housing project that has

15 or more units and the cost of the alterations is seventy-five percent (75%) or more of the replacement cost of the completed facility; and require that a minimum of five percent (5%) of the dwelling units, or at least one unit, whichever is greater, shall be made accessible to persons with mobility disabilities and an additional two percent (2%) of the dwelling units, or at least one unit, whichever is greater, shall be made accessible to persons with hearing or visual disabilities.

4) The Jurisdiction shall provide documentation satisfactory to the Department verifying that the required housing units or public facility described in the project comply with the accessibility standards. CDBG funds will not be released until the necessary documentation is provided. All CDBG funded programs must, to the greatest degree possible, be conducted in buildings which meet Section 504 accessibility standards.

I. Grantee's Data Universal Numbering System (DUNS)

The Jurisdiction shall provide the Department with a DUNS number for any contractor or subcontractor prior to release of any funds under this Agreement.

35. Community Development Activity Conditions

A. Homeownership Assistance

If the Work to be performed under this Agreement involves Homeownership Assistance, the following additional special conditions apply:

1) Program Guidelines: The Jurisdiction must submit a copy of its Homeownership Assistance Program Guidelines and its PI Re-Use Plan to the Department for review and approval within ninety (90) days of the execution date of this Agreement.

2) If the Jurisdiction proposed to assist homebuyers to purchase newly constructed units in its CDBG application under the Homeownership Assistance activity, the following requirements must be met:

a) The units must have been available for sale to the general public;

b) Development of the new subdivision must not be dependent upon the funding of the homebuyer loan;

c) CDBG funds shall not be used for construction; and,

d) Homeownership Assistance loans will not be approved prior to the foundation of the housing being in place.

B. Housing Rehabilitation

If the Work to be performed under this Agreement involves Housing Rehabilitation, the following additional special conditions apply:

1) Program Guidelines: The Jurisdiction must submit a copy of its Housing Rehabilitation Program Guidelines and its PI Re-Use Plan to the Department for review and approval.

2) Affordable Rent: If the Jurisdiction's Housing Rehabilitation Program provides for rehabilitating rental properties, the Jurisdiction must submit to the Department its provisions for assuring affordable rent for the LMI occupants. Jurisdiction may include this information as part of the Housing Rehabilitation Program Guidelines.

36. Economic Development Activity-Specific Conditions

A. Restrictions on CDBG-Assisted Public Property

CDBG funds can be used by the Jurisdiction to purchase or rehabilitate public property. The change of use of real property provisions contained in 24 CFR 570.489(i) apply to real property within the unit of general local government's control (including activities undertaken by subrecipients), which was acquired or improved in whole or in part using CDBG funds in excess of the threshold for small purchase procurement (currently $100,000). The restrictions shall apply from the date CDBG funds are first spent for the property until five (5) years after completion of the project. See the Federal Regulations for the full text of this regulation. The Jurisdiction must provide documentation of proper restriction on assisted property.

B. Business Assistance Activity

1) Jurisdictions implementing Business Assistance (BA) Loans, shall submit program guidelines that ensure compliance with CDBG underwriting requirements as described in 24 CFR 570, Appendix A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements" and with public benefit requirements contained in 24 CFR 570.482(f).

2) Jurisdictions implementing a BA loan shall provide a written Employment Agreement required to be executed between the Jurisdiction and the business owner [requirements of the Employment Agreement are described in 24 CFR 570.506 (b), (5), and (6)]. The written Employment Agreement must include a commitment by the business that the jobs are to be created or retained by the termination date of this Agreement and that at least fifty-one percent (51%) of all jobs created or retained (on a FTE basis) will be held by LMI persons. The Employment Agreement

shall specify that, prior to receiving assistance, the business shall agree to:

a) Provide a listing, by job title, of the permanent jobs projected to be created;

b) Identify which jobs, if any, are part-time and the annual hours of work for each position;

c) Identify which jobs are projected to be filled by LMI; and,

d) Provide periodic reporting (semi-annual) not limited to: listing jobs, by job title, of all the permanent jobs actually filled, and which of those jobs are held by members of the LMI.

C. Microenterprise Assistance Activities

1) Jurisdictions implementing a Microenterprise Assistance activity for technical assistance and/or microenterprise loans, shall submit program guidelines that ensure compliance with CDBG requirements. Specifically, guidelines must ensure that all beneficiaries of the program are eligible micro enterprises, per HUD definitions. A microenterprise must:

a) Have all owners of the business documented as meeting HUD family income eligibility standards; and,

b) Have documentation that the business's owners and employees are five (5) or fewer in number.

2) When implementing a Microenterprise Program, the program guidelines shall include the proposed benefits, eligible activities and ongoing evaluation of program services. The guidelines will include a Beneficiary Tracking Plan, which defines the goals; identifies the roles and responsibilities of the service providers; identifies the market and focuses the outreach; defines the screening and referral process; and, tracks the beneficiaries through the program's level of service. The Beneficiary Tracking Plan shall also describe the roles and responsibilities of the Jurisdiction and/or program operator for meeting the reporting requirements of the State CDBG Program.

3) When implementing a Microenterprise Program that is part of an integrally-related component of a larger project where non-LMI persons will be extended training and supportive services, shall submit guidelines including the methodology describing how CDBG funds will only be used towards the assistance of LMI to LMI persons under the Jurisdiction's activity.

4) Jurisdictions implementing a Microenterprise activity for loans to microenterprises made with Grant funds or PI funds, shall submit

guidelines that ensure compliance with CDBG underwriting requirements as described in 24 CFR, Part 570, Appendix A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements."

5) If under this Agreement, a Microenterprise Façade Improvement activity is being implemented, the Jurisdiction shall submit program guidelines that ensure compliance with CDBG National Objective requirements, as described in 24 CFR 570, Appendix A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements."

D. Required Agreements for Assisted Businesses

The Jurisdiction shall execute a written agreement between the Jurisdiction and the business receiving CDBG funds (loans or grants) under this Agreement to ensure compliance with CDBG State and federal regulations. The written agreement shall contain language to ensure each business complies with the terms of this Agreement, Exhibit A, as well as each of the criteria as set forth in 24 CFR 570.506 (b)(4) and (c).

1) Each agreement between the Jurisdiction and the business(es) shall be submitted to the Department for review and written approval, prior to execution by the business and the County of Colusa.

2) Each agreement shall require the business to report employee information periodically (semi-annual) to the Jurisdiction. The report shall list each job position by job title and number of annual hours worked and LMI status. The report shall list all the permanent jobs actually created or retained, and identify which of those job positions are held by members of the LMI. Additionally, the report shall include the demographics of job holders (ethnicity/race, disability, status, gender, and head of household status).

3) Each agreement shall require the business(es) submit a Data Universal Numbering System (DUNS) number and be verified as not being on the current federal debarred list, prior to receiving any CDBG financial assistance. The agreement shall require proof of proper insurance for secured collateral and protecting the Jurisdiction. The agreement shall reference this Agreement between the Department and the Jurisdiction. The agreement shall contain all other special conditions as directed by the Department or local loan committee. The agreement shall include but is not limited to the following conditions:

   a) Maintaining a specific annual debt service level; and,

   b) Requiring a quarterly review of the businesses financial statements with the owner and accounting staff.

37. **Community and Economic Development Planning Activities**

A. Non-Implementation Activity

In some cases, the Department may allow a Jurisdiction to first complete a Household Income Survey and/or a Market Study in order to document low-income benefit for the proposed study. In such cases, the Jurisdiction must conduct the survey according to CDBG standards and submit the survey for review and written approval by the Department, prior to initiating any further study activities. All Non-Implementing/Planning Activities pursuant to this Agreement must be funded with PI General Administration (PI GA).

B. Implementation Activity

Implementation Activities are not permitted under this Agreement using PI GA funds.

☐ **Certified Approving Resolution Is Attached**

I certify that the foregoing is true and correct, and will follow all requirements of this agreement. I understand that my certification also acknowledges that serous compliance issue with the above requirements could result in the State suspending City of Auburn authority to expend PI or may require City of Auburn to return unused PI to the State until the City of Auburn clears the serious compliance issues.

____
Signature of Authorized Representative

____
Date Signed

____
Name & Title of Authorized Representative

____
Signature of CDBG Section Chief

____
Date Signed

____
Name of CDBG Section Chief

EXHIBIT B

City of Auburn

Community Development Block Grant (CDBG)

Business Assistance Loan Program Guidelines

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ATTACHMENTS: PROGRAM SUPPORT DOCUMENTS

- Business Loan Application
- HUD Loan Underwriting Standards
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City of Auburn
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
BUSINESS ASSISTANCE LOAN PROGRAM GUIDELINES

1.0 INTRODUCTION

The City of Auburn here after call "Lender" has established a Business Assistance Loan Program, here after called "the Program". The Program is designed to stimulate economic growth and create jobs that will improve the living conditions of residents in the community. The Program provides affordable non-conventional financing to eligible businesses and development projects. Businesses and development projects receiving these funds will in turn be required to develop a sufficient number of net new jobs, or in the case of business preservation, retain existing jobs. These Program guidelines have been formally adopted by the Lender and approved by the state CDBG program.

2.0 BUSINESS ASSISTANCE PROGRAM OVERVIEW

2.1 PROGRAM ADMINISTRATOR

The Lender will secure the services of a qualified program administrator here after called "the Administrator" who has experience in originating business assistance loans and is familiar with state CDBG requirements. The Administrator's detailed scope of services will be negotiated and included in a formal agreement for services executed between the Lender and Administrator. In general, the Administrator will market the Program, accept and process applications, underwrite and recommend approval of loans, ensure proper loan closing and disbursement of funds, maintain loan files and fiscal records and support the Lender's staff in administration of state grants and program income used to fund this program. The Administrator will follow and ensure compliance with these guidelines.

2.2 PROGRAM SERVICE AREA

Financing under this Program is available to all eligible businesses located in the jurisdictional limits of the Lender. These CDBG funds may not be used in urban areas that receive CDBG funds annually from the federal Department of Housing and Urban Development (HUD) entitlement program.

2.3 SOURCE OF PROGRAM FUNDS

The Program is capitalized with CDBG funds provided by HUD to the State of California Department of Housing and Community Development, here after called "the Department". CDBG funds are federal funds and as such have a number of federal requirements that must be met, as described below. CDBG funds come to the Lender from two sources: 1) Department grant awards to the Lender that are administered under a state grant contract; 2) loan funds repaid from previous CDBG activities (grant and program income loans), called CDBG program income funds, administered under a Lender adopted program income reuse plan. As loans are originated under this program the repayments from those loans are returned and re-loaned out again to other eligible businesses.

2.4 ELIGIBLE LOAN APPLICANTS

Loan applicants for the Program must be existing legal businesses with a proper local business license, proper insurance and required permits per state and federal requirements. If an applicant is a new start up business and does not have proper licenses or insurance, then these items can be made a condition of funding the loan. The business can be a tenant leasing space or an owner of property where the business is located. The existing business must create one or more new permanent full time equivalent (FTE) jobs. The business may also qualify by showing job retention such that the business will be closing down or cutting staff if not for investment of CDBG funding. Retention applicants can be businesses that are shutting down permanently or moving operations overseas. They must prove that CDBG funds will allow them to stay in the current location.

Loan applicants can also be commercial developers or commercial property owners that have property they want to build on or existing commercial space they need to fill with tenants. CDBG funds can be used for tenant improvements to help fill project's spaces. Funds can also be used to pay for off-site infrastructure costs of a new construction development project. For these projects, the developer and all the partners must be underwritten with of the development and each business locating in the development must be underwritten in accordance with these guidelines.

3.0 CDBG PROGRAM REQUIREMENTS

3.1 ELIGIBLE ACTIVITIES

Funds under this program are restricted to certain eligible costs. Some common eligible costs are: 1) operating capital; 2) furniture fixtures and equipment (FF&E); 3) rehabilitation of leased space or owned buildings (including engineering and architectural and local permits or fees); 4) purchase of manufacturing equipment (with or with out installation costs); 5) refinancing of existing debt when done in conjunction with financing other eligible costs; 6) purchase of real property; 7) required off site improvements; 8) relocation grants for persons displaced due to funding of the project. Loan funds will be disbursed on a reimbursement basis incrementally as eligible costs are verified.

Funds under this Program are provided to eligible businesses as loans. Eligible loans are underwritten with the similar standards and documentation as used by private commercial lenders: credit scores, equity contributions, historic income, projected income, collateral, and debt coverage. CDBG underwriting can be more flexible in some instances depending on the business and amounts requested. The terms of the loan are typically more favorable than conventional commercial lenders with lower interest rates and longer terms for repayment. These more favorable terms must be balanced by the borrower and Lender with the requirements to create jobs and meet other CDBG program requirements. The Administrator will work closely with the eligible businesses to ensure they understand the requirements of the Program and the benefits of participating.

3.2 INELIGIBLE USE OF FUNDS

Projects that do not create permanent jobs are not eligible. Projects that are primarily housing in nature are not eligible. Projects not meeting a CDBG national objective or public benefit or federal CDBG underwriting standards are not eligible. Projects must have reasonable assurance of repayment of loan funds.

Funds under this Program will not pay for reimburse of expenses incurred prior to Department and local loan approval and/or completion of project's environmental review. Program funds will not be used to facilitate the movement of a business from one labor market area to another, as per job pirating restriction under HUD's regulations. Once approved, loan funds cannot be shifted from one approved type of cost to another without formal written approval. Funds cannot be used to support other businesses the borrower may have an interest in. Non profits are not eligible to use funds for furniture fixtures and equipment (FF&E) or working capital. Funding a project with out Department review of loan underwriting and written approval will make the project ineligible.

3.3 MEETING A NATIONAL OBJECTIVE

All CDBG funded loans must meet a CDBG "National Objective" as described in the federal regulations and statutes. Furthermore, state regulations require CDBG economic development funds to meet one of the two CDBG national objectives described below.

First, use of funds meeting the National Objective of "benefit to low income households" will require that the business receiving CDBG financing provide fifty one percent (51%) of the jobs created to low income persons. In order to meet this requirement, a third party designated by the Lender must certify family income levels of newly hired or retained employees to document that over half of them are qualified as low income To ensure this requirement is met, the Lender will require low income job creation in the CDBG loan documents signed at loan closing. All employee information is confidential and will not be released.

Second, use of funds meeting the National Objective of "elimination of slums and blight" must show that the business being assisted is located in a redevelopment agency area (meets state redevelopment law definition of blighted area) or an area formally designated as blighted by the Lender based on a survey of properties in the area. These designated areas of blight must be approved by Department staff. Documentation of meeting this national objective is done by providing a map of the redevelopment area or area designated locally as blighted and also showing the business's address/location within the designated redevelopment or blighted area. In addition, as part of loan approval, CDBG assistance must be documented as directly assisting the project such that area blight is eliminated or prevented.

3.4 MEETING PROPER PUBLIC BENEFIT REQUIREMENT

Because a private business is receiving public funds, CDBG regulations require the creation of jobs by the business to show public benefit. Under the HUD federal regulations one full time equivalent (FTE) job must be created for each $35,000 in CDBG assistance provided. So for one dollar to $35,000 in CDBG financial assistance provided by the Lender, one FTE position must be created. Part time staff may be combined to make up one FTE. One FTE consists of 1,750 staff hours. Two FTE jobs must be created for assistance between $35,001 and $70,000.

As with the national objective requirement outlined above, the CDBG public benefit requirement will be enforced via a loan agreement that the borrower executes at loan closing. The loan agreement requires that the business provide payroll documentation to the Lender or the Administrator showing job creation sufficient to meet $35,000 per FTE requirement. Once sufficient jobs have been created and documented is supplied to the Lender then no more monitoring for jobs will be required. CDBG loans are meant to create long term employment opportunities but ongoing long term monitoring is not required.

Each person who is a new hire or is in a position retained because of CDBG loan funds, must complete a self certification form. This form must be completed and provided to the Lender so that the demographic and income information can be put into the Annual Grantee Performance Report submitted to the Department. See **Attachments**.

3.5 OTHER FEDERAL REQUIREMENTS

There are a number of other federal laws and requirements that are triggered by use of CDBG funding. The Lender and Administrator will take the lead and ensure compliance with these other CDBG regulations in conformance with standards set by the HUD. Impacts these federal regulations will have on a proposed project will be explained to the borrower at the time of loan application.

National Environmental Policy Act (NEPA) regulations require an Environmental Review Record (ERR) to be submitted for each project / business funded with CDBG monies prior to award or approval of funds. The Lender is required to complete the proper NEPA review along with any state review under California's Environmental Quality Act (CEQA) review. The ERR level of review is based on the type of project proposed and ALL aggregated activities to be undertaken. The Administrator may complete the ERR for the Lender but the Lender must sign and take legal responsibility for the review. State CDBG staff must review and approve the ERR prior to loan approval or moving forward with the project.

Applicants will be informed of any additional time required for loan processing due to the NEPA review. The ERR will be done as soon as the Administrator determines that the project is eligible for funding. No costs will be charged to the borrower for this process. Once an application is submitted no activities can be done on the project until completion of the ERR as this would be a choice limiting action under NEPA regulations.

Davis Bacon Federal Prevailing Wage Compliance is required when CDBG funding is used to pay for construction costs. This can add additional costs to projects that require CDBG funds for construction (for example: equipment installation or tenant improvements). In addition, state prevailing wage may be triggered in the use of CDBG funding. Loan processing staff will work with businesses to ensure funded businesses and projects are in compliance and disclose any additional time or work required due to the HUD federal prevailing wage regulations and federal procurement standards. Any additional costs resulting from this regulation will be incorporated into the business loan and subsidized with the CDBG funds.

Acquisition and Relocation laws may be triggered when using CDBG funds (24 CFR 570.606). Acquisition laws, both federal and state, must be followed when CDBG funds are used to assist in the purchase of real property. In the same way, federal and state relocation laws apply whenever there may be displacement of a person or business because of the use of CDBG funding. Loan processing staff will work with loan applicants to ensure the business is in compliance any state or federal acquisition /relocation laws triggered by the project. Applicants will be informed of any additional time or costs or administrative work required due to acquisition or relocation regulations.

All businesses who wish to receive funds under this Program will be required to obtain a Dunn's number. The Dunn's number is free and can be obtained on line. In addition, prior to funding, the Lender will require that each business be checked to confirm they are not on the federal debarred contractors list. HUD also requires that the Department and the Lender collect certain income and demographic data from the business and any new hires resulting from the investment of CDBG funds. Applicants will be required to obtain all proper licenses and insurance to operate legally in the community.

Six (6) HUD Loan Underwriting Standards are required to be met by each CDBG loan. As previously mentioned, the loans originated under these guidelines will be underwritten using typical commercial loan underwriting criteria. There is some flexibility in how the underwriting criteria are used so the funds under this program are more advantageous than commercial business loans. In addition to the commercial lending underwriting criteria, HUD requires that six additional underwriting criteria be used because CDBG funds are public funds being provided to private for profit businesses. See **Attachments** of these program guidelines for a list of the six (6) criteria and how to comply with them.

Using CDBG Program Income (PI) funds first is required. Lender must always use local PI on hand for the same activity first prior to drawing down funds from a state open grant. If the Lender has local CDBG program income funds on hand in a business assistance revolving loan account then the Lender will expend local program income first to fund a loan prior to requesting open grant funds from the Department.

3.6 REQUIRED LOAN REVIEW BY DEPARTMENT STAFF

Department staff must review each business assistance loan for procedural compliance with federal regulations and these adopted program guidelines. Upon review of local loan underwriting done by Lender or third party Administrator, a formal written approval letter will be issued by the Department. See **Attachments** of these guidelines for a copy of the Department's current Loan Approval Checklist and guidance on underwriting different types of business assistance loans.

Note: It is recommended that the loan approval package be submitted to the Department for review prior to getting formal local approval. Once the Department has approved the loan underwriting process and CDBG regulation compliance, then the Lender can take the loan to the local loan committee for approval.

4.0 LOAN PROCESSING AND APPROVAL

4.1 PROGRAM MARKETING

Program marketing will be conducted by Administrator and Lender staff. The designated staff for the Administrator may arrange local media coverage with ads in local papers. Marketing brochures may be distributed to local chamber of commerce and business networking organizations. Presentations may be scheduled for rotary and real estate organizations in the area. Local commercial lenders will be contacted and information will be provided. Flyers may be sent to all local business owners in the program's service area. Lender staff will work closely with Administrators to ensure maximum outreach and program education takes place in the service area and applicants received the same information regarding the program and are processed in accordance with these locally adopted program guidelines.

4.2 FAIR LENDING COMPLIANCE

This program will be implemented in ways consistent with the Lender's commitment to fair lending laws. No person or business shall be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with Program funds on the basis of his or her religion or religious affiliation, age, race, color, ancestry, national origin, sex, marital status, familial status (number or ages of children), physical or mental disability, sexual orientation, or other arbitrary cause. All personal information of loan applicants will be kept confidential.

4.3 LOAN APPLICATION PROCESSING

Loan applications will be processed on a first come first served basis. The Administrator will accept loan applications and review them for initial eligibility. Applications that do not meet basic requirements of the program will be returned with an explanation of requirements needing to be met. Applications that do meet basic eligibility requirements will be sent out instructions with requests for additional information. The Administrator will also meet with the business owners and visit the site of the business.

Loan files will be set up as applications are received and proper information gathered. The Administrator will pay a visit to the businesses location and meet personally with the owner(s). Technical assistance will be provided as needed to help the business provide proper information for loan underwriting. The business will be required to provide proper financial information and agree to have credit checks conducted as part of loan processing. The Administrator may provide sample financial forms (balance / cash flow sheets, profit and loss, personal financial statements, pro formas) but in no instance will the Administrator's staff or Lender's staff fill out financial forms for applicant. The applicant will be referred to local business assistance development organizations that are available to assist applicants in producing proper financial statements, a formal business plan, a market study or accounting classes as needed.

Loan applicants are responsible for providing accurate and timely information to the program administration staff as part of the loan process. This includes disclosing any other businesses owners that have 20% or more interest. All the owners of the business, owning 20% or more interest in the business must provide proper financial information. Borrower(s) will be required to provide sources of security that the Lender can lien. Borrower(s) will provide financial information from the past performance of the business with explanations of special circumstances of past performance. Owner(s) must provide information on equity invested in the business to date and any current assets available for equity investment into the project. Borrower will be required to determine future income projections for the business that are reasonable and in line with past trends of the business. If the loan applicant does not provide required information and documentation to the Administrator in a timely fashion, then any delays in the loan approval process is not the responsibility of the Lender or Administrator.

Once the Administrator has compiled a complete loan file with all the credit, financial, and underwriting information needed to show loan is eligible under these guidelines, then a loan committee approval memo will be drafted. The draft loan memo with proper documentation per the **Attachments** loan approval checklist will be submitted to the Department for review. If the Department approves the loan's underwriting then it will be submitted to the Lender's Loan Approval Board (LAC) for approval. Once the loan is approved by the LAC then loan documents can be drawn for loan closing.

4.4 PROGRAM LOAN ADVISORY COMMITTEE

The Loan Advisory Committee (LAC) shall be made up of an odd number of persons. The Lender's staff shall ask LAC members to volunteer for this board. The LAC members can be from local financial institutions, the Lender, or other interested parties who have the professional capacity to review and evaluate commercial loans. It is the intent of the County of City of Auburn to utilize the services of the LAC for all RLA CDBG Programs.

LAC loan review and approvals will take place after Department review and approval. If the LAC makes significant changes to the approval then the loan must be resubmitted to the Department for a second review and final approval before funding. LAC meetings will be scheduled by Lender staff in conjunction with Administrator staff once a loan has been underwritten and is ready for review and approval. LAC members are responsible for reviewing each loan application funding proposals and making recommendations to the Lender. The LAC may request additional information and or attach contingencies for final approval and loan closing.

4.5 LOAN APPLICANT CONFIDENTIALITY

Persons serving as the Administrator and Lender and LAC for this Program will not disclose any of the Borrowers personal confidential information as part of loan approval process. All confidential information of businesses will only be disclosed to persons required to view the information as part of loan review and approval. All personal and business confidential information of loan applicants will be kept in a locked secured storage facility and not be available to persons outside of the program. If the Lender or Administrator or Department get a request for public records for a loan applicant then only non-confidential information, as verified by legal council, will be provided.

4.6 APPLICANT DISPUTE RESOLUTION/APPEALS PROCEDURE

Any business applying for assistance through this CDBG program has the right to appeal if their application is denied. The appeal must be made in writing to the Administrator and the Lender. The LAC will schedule a meeting for the appeal to be heard. If the application is denied a second time then the person may ask to have their appeal presented to the Lender's governing body for a final decision.

The Administrator is responsible to the Lender to assure that the Program is implemented in compliance with state and federal regulations. In addition, loans must be underwritten in accordance with proper program guidelines in a timely and responsible manner. This includes developing accurate and professional files, work write-ups and contract documents. The Administrator or their representatives will ensure the funded activities are completed and the jobs are created in accordance with federal regulations.

4.7 NO CONFLICT OF INTEREST ALLOWED

In accordance with Title 24, Section 570.611 of the code of federal regulations, no member of the governing body and no official, employee or agent of the local government, nor any other person who exercises policy or decision-making responsibilities (including members of the loan committee and officers, employees, and agents of the loan committee, the administrative agent, contractors and similar agencies) in connection with the planning and implementation of the CDBG program shall directly or indirectly be eligible for this program. Exceptions to this policy can be made only after public disclosure and formal approval by the governing body and authorized in writing by Lender's legal counsel. In the event representatives from the financial community on the LAC have a separate financial interest (excluding regular checking and savings accounts) in a loan applicant, such member will not participate in loan deliberations.

4.8 EXCEPTIONS / SPECIAL CIRCUMSTANCES

Exceptions are defined as any action, which would depart from policy and procedures stated in the guidelines. For example, if the cost of rehabilitation for critical code deficiencies exceeds 100% of the after-rehabilitation value of the property, the LAC can, on a case-by-case basis, accept a partially secured loan.

The Lender or its agent may initiate consideration of an exceptional/special circumstance. A report on the situation will be prepared. This report shall contain a narrative, including the staff's recommended course of action and any written or verbal information supplied by the applicant. The Loan Advisory Committee shall make a determination of the exceptional/special circumstances request at a regular or special meeting.

Loan payments may, on a case by case basis, be deferred for a period of time to allow a start up or expansion of a business to take place. This payment deferral determination is made by the Administrator based on the break even point of the business in the future and the ability of the owner to pay themselves for their efforts.

4.9 LOAN CLOSING PROCESS

Upon approval by the CDBG Program, the Administrator and Lender will prepare for the loan closing. The Borrower will sign all the necessary documents and agreements. The Lender will request a drawdown of CDBG funds from the Department. The Administrator will prepare the loan closing documents; prepare title and lien searches, and UCC-1 filings, if appropriate. Lender legal counsel will review all agreements and documents, as necessary. Escrow companies may be used to close loans and secure liens.

5.0 <u>DESCRIPTION OF LOANS</u>

5.1 DETERMINATION OF LOAN AMOUNT

The Program has no maximum loan amount. Typical loans are anticipated to be below $200,000 per applicant. As per Department requirements, loans in excess of $250,000 must be formally approved by the Department's Economic Development Advisory Committee (EDAC). This additional EDAC approval typically adds 60 to 90 days to the loan approval process.

Loan amounts will be determined based on number of jobs to be created or retained, the ability of the business to service the new CDBG loan payment, and the reasonableness of the costs to be paid for by CDBG. If there are not sufficient CDBG funds for the project then the program administrator can assist in locating other public or private funding to leverage CDBG funding with.

5.2 DETERMINATION OF LOAN TERM

The loan term is tied directly to what is being funded and what security is being pledged for the loan. If a business only wants operating capital then the term of the loan is normally five to seven years. If a business wants to pay for equipment and supplies then the term of the loan can be extended out to 10 years. If the loan is for real property improvements and can be secured on real property, then it can be secured for 20 to 30 years. Staff will confirm that the proper term is given based on the use of the funds and collateral being provided.

5.3 DETERMINATION OF LOAN INTEREST RATE

Most loans will have an interest rate of three percent (3%). This rate may be increased if the investment of CDBG funds at the three percent level causes the business to have an excessive profit. National standards of business profit margins will be used for comparison to make this determination. The loan's interest rate will be determined based on the underwriting analysis done by the Administrator. Some of the factors that will drive the interest rate costs are: 1) amount of equity the business brings into the proposed project; 2) ability of business to service the loan; 3) the rate of return the borrower will receive with a lower interest rate; 4) credit risk factors and management experience will also be used to determine what interest would best work for the business. By allowing the interest rate to move and not be preset, the Lender can best tailor the loans under this program to meet the needs of different businesses in the community.

5.4 LOAN PROCESSING FEES

The CDBG program provides administration funds to pay for loan processing costs. No direct loan fees will be charged to the borrower. This amount will not pay for any costs already paid for by program activity delivery. There is no pre-payment penalty on the loans under this program.

6.0 <u>LOAN UNDERWRITING STANDARDS</u>

6.1 INITIAL LOAN EVALUATION

Each project / business will be evaluated based on the how it has performed in the past and its future financial forecasts. Specifically the following will be questions will be asked upon receipt of a loan application.

- Will the business create or retain jobs?
- Will project meet a CDBG national objective?
- Are the costs to be paid CDBG eligible?
- Are the business and all owners' credit worthy?
- Do they have good "character" (pay bills on time, collect on time)?
- If a start up, does business have management capacity?
- Does start up have solid business plan and document market demand?
- Does the business have financial expertise to expand or start up?

- Is the owner(s) contributing a reasonable amount of equity?
- Is the owner able to get conventional bank financing, if not, why not?
- Was the business financially viable in the past (net income covers debt)?
- Are there reasonable financial assumptions for future viability/success?
- Is there enough collateral available to secure the loan funds?

By collecting enough initial application information from the Borrower(s) to answer the above list of questions, the Administrator will have a good sense of how strong a borrower is and how successful they will be if given a CDBG loan. Most of this information is verbally collected at the initial site visit with the owner. By meeting the borrower and asking these questions the Administrator will know what additional information/documentation needs to be collected to provide a clear picture of how CDBG funds can be used to assist the applicant. These questions demonstrate the need for CDBG funds.

After the initial review the Administrator/ application processor will collect the proper information required for loan underwriting. The required documentation is listed in the CDBG Business Loan Program Application included in the **Attachments.** The amount of documentation and detailed underwriting is based on size of the loan and type of business (existing or start up) and whether job creation or retention is used. Additional documentation may be required to clarify special circumstances of the business. Below are some to the basic underwriting requirements for a typical loan applicant.

6.2 PERSONAL AND BUSINESS CREDIT REQUIREMENTS

Each applicant will have third party credit reports obtained for them. All owners of the business with 20 percent or more interest will have credit reports provided for them. The primary applicant business and all associated businesses of the owners (20% or more ownership) will have a Dunn and Bradstreet report done on them as well.

Most credit reporting services will provide credit scores. For this program, credit scores of 550 and above are considered good credit. If no credit scores are available then a narrative must be summarized by the Administrator to give a justification for making a determination of good or bad credit. This same narrative process will be used for the business credit reports to demonstrate the good standing or poor standing of the business being evaluated.

6.3 PERSONAL AND BUSINESS FINANICAL INFORMATION

Personal financial statements will be required for each person who owns 20% or more of the business. Financial statements need to show all assets and liabilities of the person. In addition to these statements, federal tax return statements for owners and the business for the past three years are needed to give a historic perspective of income.

For the business, historic financial statements will be required. These will consist of past three years balance sheets and cash flow statements. These statements should be put together by the person responsible for doing the bookkeeping and finance management for the business. Based on these statements the Lender can develop ratios for debt service and payment history, etc.

The business will also need to provide future projected financials. These will consist of pro formas showing projected revenue and costs for the business on a monthly basis for each fiscal year for three years out. Start ups may need to provide five years of projections. These pro formas need to be completed showing the business projections with CDBG financing and showing the business with conventional financing. This will provide evidence of the benefit / increased profit the business is receiving by using the more affordable CDBG loan. These pro formas must also show the increased costs of the business due to the new jobs created and the additional CDBG debt service.

Combined debt coverage ratio on the project with proposed CDBG financing should not be less than 1:10. Meaning for every dollar in debt, the borrower has one dollar and ten cents in net income to cover those loan payments.

A project sources and uses form must be provided to show what funding is required to complete the proposed loan activity. This form will show the owners equity as well as private bank financing and any other investments from other sources. The sources and uses give a clear idea of what costs the CDBG loan will cover and its information must be reflected in the pro formas as described above.

Using the information in these financial statements, along with any back up documentation required, will allow the Administrator to prepare the project's underwriting analysis. This analysis will include both the conventional lending underwriting and HUD required underwriting.

6.4 COLLATERAL REQUIREMENTS

All loans under this program will be collateralized using normal commercial lending standards. Collateral coverage will be assessed based on assets available as security and the level at which they are already liened. CDBG funding is typically in a subordinate position to banks and other lenders. It is the goal of the Program to get the best lien position possible to ensure loan repayments and permanent job creation. Types of collateral may include:

- Secured liens on real property,
- UCC liens on machinery, equipment, or other fixtures,
- Lease assignments, as appropriate,
- Personal and corporate guarantees, as appropriate, and
- Life insurance and other collateral, as appropriate.

Appraisal of assets may be required as part of determining how to obtain the best lien positions for the CDBG loan. Combined loan to value ratio on collateral for the typical CDBG loan should not exceed ninety percent (90%). Equipment and inventory secured should be properly discounted to reflect actual resale value when doing loan to value calculations.

6.5 BUSINESS EXPERIENCE AND MANAGEMENT CAPACITY

The Administrator will obtain resumes and management histories to show the experience of business owners and their management staff in successful operation of the existing business or something comparable. This will be most important with start up businesses or with applicants that wish to use CDBG funds to purchase an existing business that is closing.

7.0 LOAN SERVICING

7.1 Loan Servicing Agent

Program loan repayments will be collected by the Administrator. Gross collected payments will be provided to the Lender for deposit into the proper CDBG program income revolving loan account(s) in accordance with the currently approved CDBG program income reuse plan. Payment for loan servicing will be done using the reuse plan's general administration annual allowable costs. The Lender's loan servicing agent will provide itemized accounts of what open grants or program income accounts the loans making payments came from. This information will allow the Lender to do proper program income reporting to the Department.

The Lender will require periodic financial statements from borrowers (typically annual) to be reviewed by the loan servicing agent. Upon reviewing the borrower's financial statements, the loan servicing agent will be able to determine how well the business is doing and if the business needs technical assistance to improve their business model. This review will also allow the Lender to be proactive in exercising liens on the borrower's assets if it is clear the business is going to close.

7.2 Loan Servicing Policies

The lender has adopted a set of loan servicing policies included in the **Attachments** that outline how the loan servicing agent will proceed if payments are late or no payments are received. The policies also outline how loan files will be set up and protected. These policies are available upon request from the Lender.

8.0 PROGRAM OVERSITE BY LENDER

8.1 OVERSITE OF PROGRAM ADMINISTRATOR

The Lender's administrative staff will serve as the primary contact with the State CDBG program representative for the Program. Lender's staff will be responsible for securing services of a qualified Administrator for implementation of this Program.

The Administrator will follow these adopted program guidelines. The Lender's staff will work directly with the Administrator and be kept informed of all marketing efforts and outreach. The Administrator will provide a monthly tracking sheet to the Lender's staff that shows all applications received and in different stages of process.

As per the agreement between the Lender and Administrator, all required reports for the Program will be reviewed and approved by the Lender's staff prior to any signatures. For financial reporting, the Lenders staff will ask for the Lender's fiscal staff to review and approve each fiscal report.

Once a loan is able to be approved, the Lender's staff will review the loan package and coordinate submittal to the State for review and approval. When State CDBG written approval is given, then the Lender's staff will schedule a Loan Advisory Board (LAC) meeting for loan approval. The Lender's staff will ensure all loan documents are properly reviewed by legal staff and meet CDBG requirements prior to signing by the borrower.

8.2 OVERSITE OF LOAN SERVICING AGENT

The loan servicing agent will be the program administrator who will comply with local loan servicing policies when collecting payments. All loan repayments of past CDBG economic development loans will be serviced by the administrator experienced in collecting and servicing business loans. The Lender's staff will closely in monitoring the Lender's existing economic development loans. The Administrator will give monthly reports on the status of loan payments to be reviewed by the Lender's Program over site staff and fiscal staff as well. If the loan servicing agent needs to visit a borrower to talk about late payments or discuss how the business is doing, then the Lender's staff shall be invited to attend the meeting as well.

At each LAC meeting the Lender's staff and Administrator will brief the members on any problems or concerns regarding repayments of existing loans. This includes decisions to foreclose and declare defaults. In addition, the governing body will make the final decisions regarding loan collection in conjunction legal counsel and staff.

Administrator's staff will complete the required State CDBG financial reports for program income, complete the proper quarterly and annual program income reports for review, approval, signature and submittal by the Lender to the State CDBG program representative. Lender staff will consult and monitor all activities managed by the Program Administrator.

ATTACHMENTS: PROGRAM SUPPORT DOCUMENTS

- **Business Loan Application**
- **HUD Loan Underwriting Standards**
- **CDBG Economic Development Loan Approval and Drawdown Checklist**
- **Self Certification Form For Income**
- **Loan Servicing Policies**
- **Employment Projection Form**

BUSINESS LOAN APPLICATION

1. **Applicant Name:** ______________________________
   Name of Business: ______________________________
   Sole Proprietorship: ________ S Corporation: ________
   Partnership: ________ C Corporation: ________
   LLC/LLP: ________

   Mailing Address: ______________________________
   Street Address: ______________________________

   Business Telephone: ________________ **Email:** ________________
   Home Telephone: ________________
   Cell Phone: ________________
   Fax: ________________

   Project Address:
   ____

   Federal Employer Identification Number:
   ____

   Assessor's Parcel Number for Business and/or Project Site: ________________
   (Needed for ALL businesses no matter if renting or owning)

   DUN # ________________ **(see last page of application for instructions)**

2. **Loan Amount Requested:** $ ____________

   Uses of Funds:

Purchase of Real Estate	$ ____________
Purchase of Existing Business	
Furniture, Fixtures & Equipment	____________
Inventory	____________
Advertising & Promotion	____________
Operating Capital	____________
Other (specify)	____________
Construction Uses	
Renovation/New Construction	____________
Leasehold Improvements	____________
Infrastructure (curbs, gutter, sidewalks, etc.)	____________
TOTAL	$ ____________

08/7/2012

3. **Ownership**

All owners of 20% or more of the applicant business are listed below:

Name ______________________________
Home Address ______________________________
City, State, Zip ______________________________
Phone ______________________________
Social Security # ______________________________
% of Ownership ______________________________
U.S. Citizen Yes ______ No______

Name ______________________________
Home Address ______________________________
City, State, Zip ______________________________
Phone ______________________________
Social Security # ______________________________
% of Ownership ______________________________
U.S. Citizen Yes _______ No_______

For corporations, please list corporate officers, titles and who will be signing loan documents.

Name	**Corporate Title**	**Signing Loan Documents (Yes or No)**

(If additional space is needed, please use reverse side of this page.)

4. Have any of the persons listed above ever been charged with, or convicted of any criminal offenses, other than a minor motor vehicle violation?

Yes No

If yes, please explain:

____

____

5. Has the applicant or any person listed above been in receivership or filed bankruptcy?

Yes No

If yes, please explain:

____

____

6. Has the applicant or any person listed above had any credit problems in the last 5 years?

Yes No

If yes, please explain:

____

____

7. Number of Employees

Current: Full Time __________ Part Time __________
Proposed New Jobs (if any): Full Time __________ Part Time __________

New Jobs to be Created (Jobs depicted on this form must be reflected on Income and Expense Projections (Attachment D)

Position / Title	Hourly Wage	Hours Per Week
TOTAL		

8. History of Business and Description of Project
(Start-up businesses must complete a Business Plan)

This should be a one- to two-page narrative where you describe the business, the prior owners, how it was acquired by you, and how long you have owned it. Discuss any significant events that have affected the firm's development. Explain what will change with the receipt of these loan funds. Cover such items as how the funds will be used, changes in operations, future plans, need for additional employees, changes in income, expenses, competitive advantages, etc.

____

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____

(If more space is needed, please use additional pages.)

9. **Collateral Being Offered as Security for This Loan**
(Real estate, equipment, inventory, other business assets, personal assets, etc.)

Description of Collateral (with APN)	Market Value	Purchase Cost	Balance Owed

10. **Other Lenders for This Project**

Type of Lender	Name of Lender	Amount	Term	Rate
Bank				
Private				
Other				
	Total	$		

PLEASE ATTACH THE FOLLOWING DOCUMENTS TO THIS APPLICATION

1. All businesses must provide Resumes of Key Personnel. **(Attachment "A")**

2. Schedule of business debt. **(Attachment "B")**

3. Current personal financial statements of principals. These must be dated no more than 90 days prior to the application. **(Attachment "C")**

4. Three (3) years of personal tax returns for the proprietor, partners, and stockholders with 20% or more ownership in the business.

5. Start-up businesses must provide three (3) years of monthly income and expense projections. Existing businesses must provide two (2) years of monthly income and expense projections. Also, a detailed description of how the projections were determined is required. **(Attachment "D")**

6. All start-up businesses must provide a Business Plan.

7. Business tax returns for the three (3) most recent years.

8. Business financial statements for the applicant's three (3) most recent fiscal years, where applicable, and a current financial statement dated no more than 90 days prior to the application.

9. Current Aging of Accounts Receivable and Accounts Payable.

10. Copy of Business License, if applicable.

11. Copy of all Corporate Filings or Partnership Agreements (in the case of Corporations – copies of Corporate Resolution authorizing the borrowing request).

12. Breakdown of proposed cost with written estimates from contractors or suppliers. Purchase agreements, when applicable.

13. Such non-financial information or supporting information necessary to substantiate the application, including, but not limited to: estimates, quotations, receipts, contracts, orders, invoices, leases, sales agreements, documentation from architects, engineers, contractors, suppliers, or others involved in the sale, lease, or construction of fixed assets, if any, for applicant's project including schedules of implementation.

APPLICANT'S CERTIFICATION/AUTHORIZATION

I/We certify that all information in this application and all information furnished in support of this application are true and complete to the best of my/our knowledge and belief.

I/We authorize the lending agency to verify all information furnished in connection with the loan application. The information that may be verified includes, but is not limited to, the following: employment, pensions, mortgages, deposits, and any other income; personal or business loans; insurance; and further, to obtain a credit report.

I/We also authorize the lending agency to disclose any financial information on income tax returns or on my personal or business financial statements, for the purpose of obtaining a loan on my behalf. I understand the information would be made available to loan committee members and other lenders that may be involved in the funding of my loan request.

I/We also acknowledge that this is an application for public funds and, therefore, the information provided may be made available for review.

Signature _______________ Date _______________

Signature _______________ Date _______________

ATTACHMENT "A"

RESUME OF

____
____
____

Note: This form is not required if another format is provided in its place.

EMPLOYMENT HISTORY (most recent first):

Dates Employed - From: ____________________ To: ________________
Name of Company: ____
Address: ____
Position and Responsibilities: ________________________________
____

Dates Employed - From: ____________________ To: ________________
Name of Company: ____
Address: ____
Position and Responsibilities: ________________________________
____

EDUCATION:

Dates Enrolled: From: ____________________ To: ________________
Name of School: ____
Address: ____
Degree Received: __________________ Date Graduated: ________________

Dates Enrolled: From: ____________________ To: ________________
Name of School: ____
Address: ____
Degree Received: __________________ Date Graduated: ________________

OTHER RELATED TRAINING OR EXPERIENCE:

____
____
____

References will be furnished upon request.

Signature: ____________________________ Date: ____________________

ATTACHMENT "B"

BUSINESS INDEBTEDNESS: Furnish the following information on **all** business debts owed -- **vendors, credit cards, payroll taxes, income taxes, sales tax, contracts, notes, and mortgages.** (Current balances should agree with the latest balance sheet submitted.) Use reverse side or another sheet to list additional information.

To Whom Payable	Original Amount	Original Date	Present Balance	Rate of Interest	Maturity Date	Monthly Payment	Security	Current = C Past Due = P

AFFIDAVIT OF CURRENT TAX STATUS

I hereby certify that any and all of the applicable real property taxes, personal property taxes, Federal & State income taxes, Federal and State payroll withholding taxes, State Sales Tax, insurance premiums, and any other assessment or public charges are current.

______________________________ Business Owner / Applicant

______________________________ Date

U.S. SMALL BUSINESS ADMINISTRATION

ATTACHMENT "C"
PERSONAL FINANCIAL STATEMENT

OMB APPROVAL NO. 3245-0188
EXPIRATION DATE:11/30/2004

As of ____________, ______

Complete this form for: (1) each proprietor, or (2) each limited partner who owns 20% or more interest and each general partner, or (3) each stockholder owning 20% or more of voting stock, or (4) any person or entity providing a guaranty on the loan.

Name Business Phone

Residence Address Residence Phone

City, State, & Zip Code

Business Name of Applicant/Borrower

ASSETS	(Omit Cents)	LIABILITIES	(Omit Cents)
Cash on hand & in Banks	$	Accounts Payable	$
Savings Accounts	$	Notes Payable to Banks and Others (Describe in Section 2)	$
IRA or Other Retirement Account	$	Installment Account (Auto) Mo. Payments ______	$
Accounts & Notes Receivable	$	Installment Account (Other) Mo. Payments ______	$
Life Insurance-Cash Surrender Value Only (Complete Section 8)	$	Loan on Life Insurance	$
Stocks and Bonds (Describe in Section 3)	$	Mortgages on Real Estate (Describe in Section 4)	$
Real Estate (Describe in Section 4)	$	Unpaid Taxes (Describe in Section 6)	$
Automobile-Present Value	$	Other Liabilities (Describe in Section 7)	$
Other Personal Property (Describe in Section 5)	$	Total Liabilities	$
Other Assets (Describe in Section 5)	$	Net Worth	$
Total	$	**Total**	$

Section 1. Source of Income		Contingent Liabilities	
Salary	$	As Endorser or Co-Maker	$
Net Investment Income	$	Legal Claims & Judgments	$
Real Estate Income	$	Provision for Federal Income Tax	$
Other Income (Describe below)*	$	Other Special Debt	$

Description of Other Income in Section 1.

*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly,etc.)	How Secured or Endorsed Type of Collateral

Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).

Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned. (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)

	Property A	Property B	Property C
Type of Property			
Address			
Assessor Parcel Number (APN)			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

Section 5. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency)

Section 6. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)

Section 7. Other Liabilities. (Describe in detail.)

Section 8. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries)

I authorize SBA/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of either obtaining a loan or guaranteeing a loan. I understand FALSE statements may result in forfeiture of benefits and possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).

Signature: Date: Social Security Number:

Signature: Date: Social Security Number:

PLEASE NOTE: The estimated average burden hours for the completion of this form is 1.5 hours per response. If you have questions or comments concerning this estimate or any other aspect of this information, please contact Chief, Administrative Branch, U.S. Small Business Administration, Washington, D.C. 20416, and Clearance Officer, Paper Reduction Project (3245-0188), Office of Management and Budget, Washington, D.C. 20503. **PLEASE DO NOT SEND FORMS TO OMB.**

ATTACHMENT "D"
INCOME AND EXPENSE PROJECTIONS

Instructions

This is a worksheet designed to help determine monthly projected business income and expenses for a twelve month period. This will also help assess the feasibility of a project by determining if the projected income will cover the projected expenses, including owners draw and loan payments. This is just a worksheet, so fill it out in pencil. You will be making a lot of changes to it.

MONTHS:	Fill in the month you anticipate opening your business, or start with "Month #1".
TOTAL SALES:	All income from the sale of products or services for the month.
COST OF GOODS SOLD:	Direct cost of the products sold. (Example: for a restaurant, the cost of goods sold is the food; for a clothing store, the clothing; for the manufacturing of tables, the cost of the wood, metal, varnish.) Service businesses do not have a cost of goods sold.
GROSS PROFIT:	Subtract the **Cost of Goods Sold** from the **Total Sales** to determine the **Gross Profit.**
OPERATING EXPENSES:	Listed here are some examples of monthly expenses. You may have some additional or different expenses that are specific to your business, just write them in.
TOTAL OPERATING EXPENSES:	Add up all **Operating Expenses** for the month.
NET PROFIT:	Subtract the **Total Operating Expenses** from the **Gross Profit.**
OWNER'S DRAW:	This is the money the business owner will draw from the business for personal living expenses. When there is another monthly source of income, owner's draw may not apply. If the business owner will be paying personal living expenses from the business sales, owners draw will need to be determined. There is no owners draw under a corporate legal structure; all wages should be shown in the wages and payroll line items.
AVAILABLE FOR LOAN PAYMENT:	Subtract **Owner's Draw** from **Net Profit.**
LOAN PAYMENT:	This is the monthly payment of principal and interest based on the amount of the loan needed. This amount can be obtained from the Financial Consultant.
MARGIN:	Subtract the **Loan Payment** from the **Available for Loan Payment.** This is the projected amount left after all expenses have been paid. If the **Loan Payment** amount is larger than the **Available for Loan Payment**, you are losing money at the end of the month.

ATTACHMENT "D" INCOME AND EXPENSE PROJECTIONS WORKSHEET

MONTHS													TOTAL
Total Sales													
Less Cost of Goods Sold													
Gross Profit													
OPERATING EXPENSES													
Accounting													
Advertising													
Auto & Vehicles													
Freight/Postage													
Insurance													
Leases (Equipment)													
Office Expenses													
Rent													
Repairs & Maintenance													
Supplies													
Taxes (Sales)													
Travel and Entertainment													
Utilities/Telephone													
Wages & Payroll Taxes													
Other													
TOTAL OPERATING EXPENSES													
Net Profit													
Owner's Draw (not for corps)													
Available for Loan Payment													
Loan Payments													
MARGIN													

AUTHORIZATION AND RELEASE FOR CREDIT REPORT

Dear Requestor:

Prior to a credit report request, you must understand the following:

1) Access to your credit file is limited to yourself and your agents acting on your behalf.

2) Your consent in writing is required before a report may be provided.

3) You are entitled to a copy of the credit report and a copy of the FTC's "Consumer Rights Notice".

Based on the above information, I hereby authorize **Community Development Services (CDS)** to obtain my credit report for the purposes of **applying for a business loan.**

PLEASE PRINT THE BELOW INFORMATION NEATLY

Applicant	Spouse/Partner
Name: ____________________ (Full name including Jr., Sr., etc.)	*Name:* ____________________ (Full name including Jr., Sr., etc.)
SSN#: ____________________	*SSN#:* ____________________
Date of Birth: ____________________	Date of Birth: ____________________
Address: ____________________	Address: ____________________
City, State, Zip: ____________________	City, State, Zip: ____________________
Previous Address: ____________________	Previous Address: ____________________
City, State, Zip: ____________________	City, State, Zip: ____________________
____________________ Signature	____________________ Signature

How to Get a DUNS

Please follow the below steps and read the attached document to assist you with your new D-U-N-S Number request:

1. Click or copy the following link to your browser http://fedgov.dnb.com/webform

2. Click on "Begin D-U-N-S Search / Request Process" at the top of the left hand tool bar

3. In the "Search" screen select "United States of America" (It will be at the top of the list) from the drop down list and click "Continue"

4. In the "iUpdate – Webform Page" click on "Continue to iUpdate" arrow at the bottom of the screen

5. In iUpdate, locate the center box titled "Find DUNS or Request new DUNS" and click on the "Start Now" button

6. Read the attachment "Step-by-Step Process for Customers" document. This will assist you in the process.

7. You must first make sure we do not already have your company on file. In the "Company Look-up" screen, please enter your Business Name, City and State and click the "Search" button.

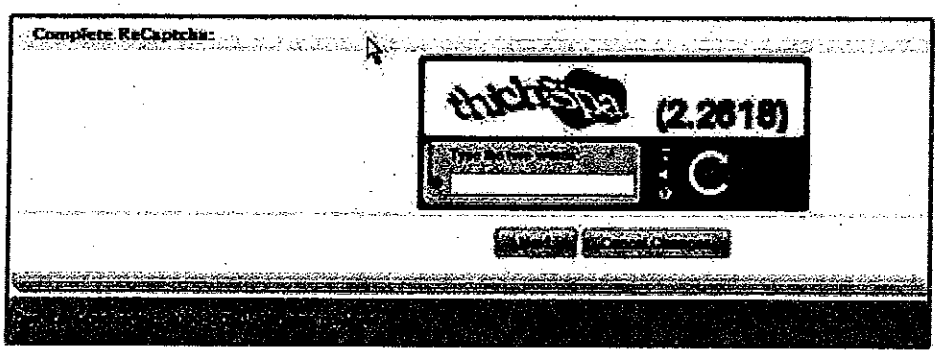
    A. Utilize the attached "Step-by-Step Process for Customers" document to assist you through the process

8. If you do not locate your company, click on the "Request a D-U-N-S Number" arrow at the bottom of the screen

9. You will now be in the New D-U-N-S Registration Process. Two **IMPORTANT NOTES**

    A. This **<u>PERSONAL</u>** information is required at this step to validate your **<u>PERSONAL</u>** identity and eliminate fraudulent activity. **<u>Do not</u>** enter your **<u>company address</u>** as your registration will **<u>fail.</u>**

    B. Please ensure you see the ReCaptcha box at the bottom of the screen (see below screen shot) If you do not have the ReCaptcha box, you will need to return to Step 8. When you get the box "Do you want to view only the webpage content that was delivered securely?" Click the "No" button.



10. Now complete the process. It will take 24-48 hours to recieve

11. Once you have completed the entire process, you will receive a confirmation email. It will take **24 to 48 hours to receive your D-U-N-S Number**, which you will receive via email for your records.

HUD CDBG UNDERWRITING GUIDELINES AND MEETING PUBLIC BENEFIT AND NATIONAL OBJECTIVES

The loan underwriting policies of the **City of Auburn** Economic Development Program are designed to insure the Program's on-going viability, assist businesses that could not proceed without the Program, and ensure that the Program assistance is "appropriate."

The City of Auburn has adopted the HUD underwriting guidelines to determine whether a proposed CDBG subsidy is ***appropriate*** to assist the business expansion or retention per use of HUD Underwriting guidelines in 24 Part 570.482 (e) of the CDBG federal regulations. In addition, the project will be reviewed to determine that a minimum level of ***public benefit*** will be obtained from the expenditure of the CDBG funds in support of the project. The objectives of the underwriting guidelines are to ensure:

A. Project Costs are Reasonable

All project costs will be reviewed for reasonableness, and to avoid providing either too much or too little Program assistance. The amount of time and resources expended evaluating the reasonableness of a cost element shall be commensurate with its costs. In some instances, it will be necessary to obtain third-party, fair-market price quotations or a cost estimate. Particular attention will be made in documenting the cost elements in a non-arms-length transaction.

Procedures:

1. Start with Sources and Uses of Funds.

2. For each Use of Funds, determine if costs are reasonable.

   a. For construction, machinery, equipment. Determine if the costs are estimated by a third-party (e.g. architect, engineer, equipment supplier, etc.) Determine if the estimates are included in the application. Determine if the contingency is adequate.

   b. For land, determine if the price is based upon fair market value. If not, determine what the fair market value is and how was price determined. Obtain an appraisal or an opinion of fair market value.

   c. For development costs (building fees, architectural/engineering costs, financing costs, franchise fees, etc.), determine if these costs are itemized and supported by contracts or other documentation.

d. For working capital, compare the amount of working capital to industry averages, risk, historical needs of the business and the projected need. Analyze business financial statements, projections, operating cycle and financial ratios.

3. A higher level of review will be required if there are no third party estimates.

4. Sources of information:

   a. Sources and Uses of Funds statement
   b. Financial Statements and Projections
   c. Industry Averages (Robert Morris or equivalent)
   d. Third party costs estimates
   e. Building Department/Public Works
   f. Realtors
   g. Appraisers
   h. Architects/Engineers
   i. Contractors
   j. Equipment Suppliers
   k. Other similar projects

B. Commitment of All Sources of Project Financing

Prior to the commitment of Program funds to the project, a review shall be conducted to determine if sufficient sources of funds have been identified and committed to the project, and the participating parties have the financial capacity to provide the funds to ascertain if the project is viable and will move ahead in a timely manner. In certain circumstances, the Program may commit funds in advance of final commitments from other funding sources. However, to conduct the underwriting analysis, the approximate terms and conditions of the other funding sources should be known. Final commitments from the other funding sources will be required, with the substantially similar terms and conditions as used in the underwriting analysis, will be required prior to any loan closing or disbursement of funds.

Procedures:

1. Start with Sources and Uses Form.

   a. For all sources of funds, determine if there is evidence verifying commitment or intent to commit.

   b. For debt sources, be in receipt of letters of intent or interest which specify the level of commitment and terms/conditions of the loan. The proposed terms should be reflected in the business projected debt schedule and in the financial projections. Determine if actual loan packages have been submitted to lenders.

c. For equity sources, determine if the equity injection is verified on the business or personal financial statements. Or if the equity is provided by an investor, obtain evidence of the level and terms of commitment (e.g. letter of intent with accompanying financial statement verifying availability of funds).

2. Sources of information:

   a. Sources and Uses of Funds
   b. Business and Personal Financial Statements
   c. Letters of intent/interest from lenders, partners and investors

C. Avoid Substitution of CDBG Funds for Non-federal Financial Support

The project will be reviewed to ensure that, to the extent practicable, Program funds will not be used to substantially reduce the amount of non-federal financial support for the project to make the most efficient use of the Program funds.

In order to receive Program funds a project must have a "financial gap." This gap must be documented. There are three types of financial gaps, two are discussed below, and the third is discussed under the criteria of "Return on Equity Investment." One project may have two different gaps. The types of gaps are as follows:

1. Unavailability of Capital: The project can afford the cost of financing, but is unable to obtain the funds from either debt and/or equity sources. In regards to debt, the gap may be a result of a lender's loan to value requirements or the inherent risk of the industry or project. For example, the lender will only loan 70% of the project's cost. In this case, the business may not have the cash to bridge the gap, or if the business bridges the gap, cash flow may be so restricted as to jeopardize the business. In order to document this gap, several steps need to be undertaken. The lender needs to be contacted to determine if there is any ability to increase the size of their loan. Other lending sources, both public and private, need to be explored. This includes looking at the business owner(s) personal financial statements for potential funds, including home equity loans. Finally, in addition to looking at the business and personal financial statements and tax returns, a pro forma cash flow analysis needs to be prepared and analyzed, with and without Program funds, to demonstrate the gap.

The terms and conditions of a loan under this gap analysis should be comparable to the market.

2. Cost of Capital: The project cannot support the interest rate, loan term and/or collateral requirements of a lender. In analyzing this gap, discussions with the lender are important to determine any flexibility in terms. A single project may not be able to support the rate, terms and collateral requirements, or may just face a single hurdle. In addition, the gap may only exist in the early

years of the project. To determine the gap, business and personal financial statements and tax returns shall be analyzed. Sources of equity shall be explored. Public and private funding sources that would bridge the gap shall be evaluated. Pro forma cash flow analysis shall be developed with and without the Program funds to demonstrate the gap. Depending on the gap, the terms or rate shall be adjusted to a rate that allows the project to proceed but are not too generous. Terms can be adjusted to allow for deferrals of principal and /or interest, or to allow loans to be amortized over a longer period. Interest rates can be adjusted, including increases in the rate over time as cash flow allows.

Procedures:

1. Review the Sources and Uses to determine if other sources of funds are available (e.g. SBA, RD, business, personal or investor equity, etc.)

2. If the need for RLF funds is based upon a lender's loan-to-value requirements, determine if this requirement is reasonable and based upon the project's risk and location.

3. If the need is based upon the cost of funds, then conduct a review of the financial information to validate the need for the Program funds.

    a. Review historical and projected financial statements.

    b. Determine if revenues, expenses, debt service, officer's salaries, owner's draw, net operating income are reasonable via a comparison of historical financial information and industry averages (Robert Morris or equivalent).

    c. Review projections with and without CDBG funds. Determine if the project can support more debt within prudent underwriting guidelines. Determine if net operating income, owner's draw, and the degree of equity participation is reasonable.

4. Sources of information:

    a. Sources and Uses of Funds
    b. Financial Statements
    c. Projections
    d. Industry Averages (Robert Morris)
    e. Other Financing Programs
    f. Lenders

D. Financial Feasibility of the Project

Each project will be examined to determine the financial viability of the project, and thus the reasonable assurance that the public benefit will be realized. The current and past financial statements for both the business and individuals must be analyzed, along with tax returns and projections. The assumptions behind the projections must be critically analyzed. Income and expense costs shall be evaluated and compared historically, where applicable, and compared to industry averages (using guides such as Robert Morris' Annual Financial Statements). Project costs, including both hard and soft costs, must be determined to be reasonable. Accurate project costs are vital to determining project feasibility.

As part of the financial analysis, the past, current, and projected financial data shall be analyzed to determine if the job estimates are reasonable and supportable. Labor costs shall be looked at the break-even point. In addition, Labor costs shall be checked against industry averages. Variations should be explained in the loan analysis.

The terms and conditions of the loan must be "appropriate." In general, the interest rate shall be set at a rate where available cash flow is able to meet debt obligations, after other obligations are met, with enough cash flow remaining to operate successfully. The loan term typically is based on the asset being financed. The term should not exceed the economic life of the asset being financed. However, a longer loan amortization schedule, with the loan due at the end of the economic life may be justifiable.

Each loan shall include a written explanation of the "appropriate" analysis that was undertaken, and the reason the terms and conditions of the loan were approved.

Historical and projected financial statements will be subject to financial analysis to determine the gap, and structure the terms and conditions of the loan, as discussed above, but also to determine that the project is feasible. In addition, using prudent underwriting guidelines, demonstrating that the proposed loan is of sound value and that past earnings and future prospects indicate an ability to meet debt obligations out of profit.

Information that will be required to be submitted by the applicant will depend on the project, ownership structure and whether it is an on-going or start-up business. In general, the information required is outlined in the Program checklist in the exhibits.

The financial analysis will differ depending on whether the business is a start-up or existing business. The analysis will include for existing businesses a spread of the current and financial statements to determine trends. The pro forma statements will then be compared to these past statements. Financial ratios will be analyzed. The statements and ratios will be compared to industry averages. For start-up business the projections will be analyzed and ratios developed, and both compared to industry averages.

1. Ratios that will be analyzed include:

   a. Current Ratio: current assets/current liabilities. This ratio is a rough indication of a firm's ability to service its current obligations. A ratio of 2:1 is considered secure.

   b. Quick Ratio: cash & equivalents plus accounts & notes receivable/current liabilities. This ratio is a refinement of the current ratio. A ratio of 1:1 usually indicates ample liquidity.

   c. Cash Flow Coverage: net profit & depreciation & depletion-amortization expenses/current portion of long term debt. This ratio is a measure of the ability to service long term debt.

   d. Another coverage ratio is: earnings before interest & taxes/annual interest expenses(EBITA). This ratio is a measure of a firm's ability to meet interest payments. A cash flow coverage of 1.25 debt service shall be used as a guideline.

   e. Debt to Worth: total liabilities/tangible net worth. This ratio is the relationship between debt and a businesses net worth. A lower ratio is an indication of greater long-term financial safety and greater flexibility to borrow. In general, a debt to worth ratio of higher than 5:1 should not be exceeded as an underwriting policy. There are exceptions when the industry average is high due to its capital intensive nature or when projections show the ratio lowering quickly.

   f. Collateral Coverage: The value of collateral as compared to the amount of the loan. Typical underwriting guidelines suggest that 125% of loan balance be used. However, this is highly dependent on the quality and security of the collateral. In addition, collateral requirements are a cause of "financial gaps." The RLF shall use 125% as a guideline, which shall only be lowered with specific and detailed analysis and explanation.

   g. Break-even Analysis: The analysis of the project's ability to support the projected Labor costs and additional debt service at its break-even point (BEP) will be analyzed to determine what proportion of the jobs can be supported at that BEP. This will serve as a worst case look at the business' prospects for success, ability to service new debt, etc.

The financial and ratio analyses must be supported by the business plan. The business plan must provide a clear understanding of the project, competition, market strategy, sales estimates, management capacity and other factors.

Lastly, to ensure project feasibility, an evaluation will be conducted of the experience and capacity of the business principals to manage the business and achieve the projections.

2. Procedures:

   1. Perform financial underwriting analysis.

      a. Spread historical financial statements and projections. Identify any significant differences. Compare to industry averages.

      b. Review assumptions to projections. Determine if projections are reasonable and supported by market studies, business plan, and historical trends.

      c. Review financial ratios for project. Compare to industry averages. If significantly different, determine the reasons and impact on feasibility.

      d. Review cash flow for project. Determine if there is adequate working capital.

      e. Determine break even point for project, and how much the projections are above the break even point. Determine if the public benefit will be realized at the break even point.

3. Review the business plan, market information, historical financial statements, projections, ratio analysis, break even analysis, spread sheet analysis and management capacity to determine the project feasibility.

4. Sources if information:
   a. Historical financial statement
   b. Financial Projections
   c. Business plan
   d. Market and industry information
   e. Industry Averages

E. Return on Equity Investment

The return on equity investment is the amount of cash that the investor/business owner is projected to receive in relation to their initial equity. For a sole proprietor, this equates to salary plus net income. To the extent practicable, the Program should not provide more than a reasonable return on investment to the business owner. This will help ensure that the Program will maximize the use of funds and not unduly enrich the business owner(s)/investor(s). However, care shall be taken to ensure that the rate of return will not be too low, so that the business owner's motivation remains high to pursue the business with vigor.

If the project's financial returns are projected to be too low to motivate the business and/or investor to proceed with the project then risks of the project outweigh the returns. An inadequate rate of return, adjusted for industry and location risks, is a third method to determine the gap appropriate to be funded with Program funds. To analyze this gap, the projected return on investment must be compared to the return on investment on similar projects. If it is shown that a gap does exist, then the Program financing rate and terms must be set at a rate which provides a return equal to the "market rate." Real estate appraisers and lenders are important sources of information on "market rate" returns.

1. Procedures:

   a. Review projections.

      1. Review revenues, expenses (including officers' salary/owners' draw), debt service and net operating income. Compare to historical financial information and to industry averages. Determine if these items are reasonable.

      2. Review indicators of owners' return on equity, including officers' salary, owners' draw, and net operating income. Given the project's risk and local conditions, determine if the return on equity is reasonable compared to industry averages.

   b. Review the business and personal obligations. Determine what return on equity is necessary to meet personal and business obligations.

   c. If return on equity is above industry averages, adjusted for risk and local conditions, take steps to reduce the return to within a reasonable rate by restricting owners' draw/officers' salary, or adjusting the Program loan terms.

   d. If return is below average, adjust Program subsidy to bring the rate of return closer to the industry average.

   e. Sources of information:

      1. Financial projections
      2. Historical financial statements
      3. Personal financial statements
      4. Industry averages

F. Disbursement of Program Funds on a Pro Rata Basis

To the extent practicable, Program funds should be disbursed on a pro rata basis with other funding sources to avoid placing Program funds at a greater risk than other funding sources. When it is determined that it is not practicable to disburse RLF funds on a pro rata basis, other steps shall be taken to safeguard Program funds in the event of a default.

1. Procedures:

   a. Review Sources and Uses of Funds. Determine when funds will be expended as compared to other funds.

   b. Determine other funding sources' policies towards expenditure of funds. These policies may require the use of Program funds first. If so, there may be a need to negotiate with other funding sources.

   c. If Program funds are to be expended first, consider actions to safeguard Program funds (e.g. performance or completion bonds).

   d. Sources of information:

      1. Sources and Uses of Funds
      2. Construction Contracts
      3. Lender Requirements/Policies

G. Standards for Evaluating Public Benefit

Each project will be reviewed to determine if a minimum level of public benefit will be obtained from the expenditure of Program funds.

1. The minimum standards are:

   a. The project must lead to the creation or retention of at least one full-time equivalent job per $35,000 of RLF funds used; or

   b. The project must provide goods or services to residents of an area, such that the number of TIG persons residing the areas served by the project amounts to at least one TIG person per $350 of RLF funds used.

2. Procedures:

   a. Review historical financial statements.

      1. Review historical Labor costs as a percentage of revenues. Compare the percentage to projected Labor costs. Determine if the two figures are consistent. If not, obtain an explanation.

      2. Determine if the number of projected jobs is consistent with the projected increase in Labor costs. Compare the Labor cost percentage to industry averages.

3. Review the projections.

    a. Determine if the assumptions used to project revenues and Labor costs are reasonable. Determine if revenues and Labor costs are supported by market/ industry information and historical financial statements.

4. Determine if project meets minimum public benefit requirements (one full-time equivalent job for every $35,000 in Program funds, or one TIG resident per $350 in RLF funds residing in the area served by the project).

5. For infrastructure projects, determine the area of benefit, negotiate fair share contributions, and track jobs from the Employer(s) if the projected cost/job is less than $10,000, or track jobs in the area of benefit if the projected cost per job is $10,000 or more.

HUD REQUIRED PUBLIC BENEFIT STANDARD

ECONOMIC DEVELOPMENT PROGRAM

Each business provided assistance under the Program must demonstrate that the assistance provided meets minimum federal public benefit standards. The amount of assistance to an individual business cannot exceed $35,000 per full time equivalent (FTE) permanent job created. Failure of the grantee to meet the CDBG public benefit requirements of one permanent full time job per $35,000 may result in repayment of grant funds or program income to the Department or the local account. For purposes of meeting the CDBG public benefit requirement, all jobs must be created or retained by the term laid out in the loan agreement, which is typically 30 months.

Job Creation Proposals

In job creation proposals, it is required that the recipient (the business) demonstrate that Program assistance will result in the creation of permanent, full-time (or full-time equivalent) private-sector jobs. For start-up businesses, job creation estimates should be supported by the projected labor costs contained in the financial projections. Financial projections for existing businesses should also support labor costs associated with the increase in jobs.

In job creation projects, the lender must require compliance with National Objectives and public benefit requirements. When meeting the TIG requirements, at least 51% of the 100% screened beneficiary population must demonstrate TIG eligibility, either through census/presumption records, or as demonstrated by signed self-certifications by the beneficiary. A beneficiary is the employee hired as a result of Program assistance.

Job Retention Proposals

To qualify as a job retention proposal, the lender will document with evidence in the public record that the jobs would actually be lost without the Program assistance. There should be evidence in the public record that prior to providing Program assistance, it was clearly and objectively demonstrated that without Program assistance, the jobs would be lost. Examples of clear and objective evidence include: a notice issued by the business to affected employees; a public announcement by the business to affected employees; financial records or other records provided by the business or other entities that clearly indicate the need for assistance to continue the business's operations in the jurisdiction. The lender will maintain documentation that supports the conclusion that without the infusion of the Program funds, the jobs would be lost.

If 51 percent of the current workforce is in the TIG and Program funds will prevent business failure, the project qualifies as job retention. An income survey of existing employees must document that Program funds are retaining jobs that are principally held (51 percent) by TIG employees. Signed self-certification forms must be complete for each retained employee documenting family income. The income determination for retained employees must be made at the time Program funds are requested and prior to any decision to provide CDBG assistance.

Alternatively, if the current workforce demonstrates less than 51 percent TIG benefit, the proposal may still be eligible if it can be demonstrated that, based on historical data, the anticipated job turnover during the loan term will result in job opportunities for TIG. The combined retained TIG jobs and those filled by TIG through job turnover over the next 30 months may qualify the project as eligible for Program funds.

A self-certification form may be used to survey the incomes of the current employees to determine TIG status prior to making a funding decision, but only to demonstrate eligibility for the use of funds. If funding is approved, a representative number of the retained employees must be income-screened for TIG eligibility to document the reliability of the survey results and to demonstrate a 51% TIG benefit at time of retention or a plan for achieving 51% benefit through attrition.

Permanent Jobs

Only permanent jobs directly related to the assisted activity are considered for purposes of determining whether the project will generate the requisite amount of public benefit. A permanent job is defined as a job classification that provides 1,750 hours a year employment. FTE jobs are considered toward establishing a final job count. Two part time jobs of at least 875 hours per year each can count as one FTE job.

During underwriting, the grantee must evaluate the business' timetable for job creation to determine whether the proposed timetable is attainable, and will occur by the end of term laid out in the loan agreement. A job classification is considered "permanent" if it is tied to the business's annual growth in sales or supported by the prior 24 months' sales and operating expenses.

Owners/principals of businesses, spouses of the owner of the business and family members with an ownership interest in the business, do not count toward meeting the public benefit requirements in Program activities.

Seasonal jobs (e.g. at a vegetable packing plant) may be considered to be permanent jobs only if the duration of the season is long enough for the job to be considered as the person's principal occupation and principal source of work-related income.

HUD CDBG NATIONAL OBJECTIVE STANDARDS

MEETING NATIONAL OBJECTIVE #1
TIG BENEFIT IN ECONOMIC DEVELOPMENT

A. Direct Evidence of TIG Status and Income Screening

For purposes of meeting the TIG benefit national objective, the salary level of a job is not evidence that it is held by a targeted income group employee. That is, the Program cannot conclude that an employee is in the targeted income group based on a minimum wage job. It is possible that a minimum wage job, when combined with a spouse's salary or the salary of an adult child living at home, will exceed 80 percent of the county median income for the employee's family size. If so, the employee is not within the targeted income group. Therefore, for an employee to qualify as belonging to the targeted income group, all sources of family income must be disclosed. The total family income as of the date of hiring (for newly created jobs) or the date of the Program application (for retained jobs) must be at or below 80 percent of the county median for the employee to qualify for inclusion in the targeted income group.

All employees (100 percent) for jobs being counted towards the TIG benefit requirements must be income screened to determine TIG status. It is the responsibility of the lender to assure that the job holders are being screened for TIG eligibility and that adequate records are being maintained. The County may utilize the services of a local job training agency to income screen job applicants. The State CDBG program allows jurisdictions to use the agencies funded through Workforce Investment Act (WIA) funds for a definition of income eligibility when there is an executed contract with a WIA agency. The Lender will also include a non-financial default provision in all loan agreements that specifies that the business may utilize the services of the agency and will provide the county with regular (at least quarterly) reports on number of hires and number of TIG hires.

If a job training agency does not income screen applicants, the Lender or its agent or the business must income screen the employees. In this instance, the Lender or the business may utilize the methodology of the local job training agency, or Section 8 program, to determine total family income while using the income limits specified by the Department of Housing and Urban Development, which are by county and by family size. The Lender, will include a non-monetary default provision in the loan agreement with the business or developer that specifies income screening on all applicants for hire according to CDBG requirements, and that requires the business to provide regular reports to the county on the number of hires and number of TIG hires.

Self- Certifications

A self-certification form is one that applicants for hire or employees being retained fill out certifying their total family income. It must also include a statement that the person making the certification aware that the information being provided is subject to verification by the local, State, or Federal government. To be valid, a self-certification form must include the employee's home address and must be signed and dated by the employee. Self-certification forms may be used for identifying targeted income group eligibility at the time funding is approved for a job retention activity or when the employee has no income documentation available.

The CDBG program views self-certification forms as a last resort form of income documentation, to be utilized as a preliminary indicator of compliance with a national objective for job creation/retention projects or when other documentation of income is not readily available. At least 51% of all job holders must be verified as income eligible by income documentation. At the time of monitoring CDBG staff will verify the back up documentation of at least 30% of the self-certifications used to support meeting the CDBG requirements.

MEETING NATIONAL OBJECTIVE #2
ELIMINATION OR PREVENTION OF SLUMS AND BLIGHT

A. Area Benefit for Elimination or Prevention of Slums and Blight

Projects meeting the national objective of elimination or prevention of slums and blight under area benefit must be located in a redevelopment area that has been documented as blighted and approved / designated as blighted by the governing body. Jurisdictions with out redevelopment areas must conduct the proper documentation of area blight per HUD guidance and obtain State approval of area blight before having the local governing body approve/ designate the area as blighted.

In addition, projects in these blighted areas must be in need of repairs and or vacant in blighted condtions to qualify under this national objective. The project scope of work should involve removing existing blight or preventing further blight in the area. Building on a vacant lot is not considered elimination of blight.

B. Benefit for Elimination or Prevention of Slums and Blight or Specific Spots

Projects meeting the national objective of elimination or prevention of slums and blight under spot basis do not have to be located in a redevelopment area or area designated as blighted.

However, projects using spot blight must be shown to be in need of physical improvements required under the project's scope of work. The governing body must pass a resolution designating the specific project site/property as blighted. Vacant lots cannot be claimed as blighted property.

CDBG ED LOAN APPROVAL AND DRAWDOWN CHECKLIST

Complete this form and submit it with loan approval package per CDBG guidance document.. State written approval of the loan is required prior to loan funding and prior to submitting a state CDBG funds request form.

CBDG GRANT ____ & OR Program Income____	**DATE:**
GRANT Contract #:	Date Received by State:
JURISDICTION:	Telephone No.:
Contact :	Fax No.:
Address:	E-Mail:

LOAN REVIEW CHECKLIST

Date of Local Loan Approved:		
Type of Activity(Check One):	____ **Business Assist.**	_____ **Micro Enterprise**
Part One: CDBG Federal Overlays :		
1. Special Conditions:	**Yes**	**No**
a. Is a completed/signed NEPA review attached?		
b. Is Prevailing Wage Monitoring Triggered?		
c. Is Real Property to be Acquired Using CDBG Funds? If Yes, is proper CDBG acquisition process followed?		
d. Is Real Property to be Acquired **Without** CDBG Funds? If Yes, is proper option to purchase in place?		
e. Will Project Cause **Displacement** of any "persons"?		
f. Is Business on Federal Debarred List?		
g. Is Business's Dunn's Number on File?		
2. Project Funding (Fill in Amounts):		
a. CDBG Open Grant	$	
b. CDBG Program Income	$	
c. Local Funds (RDA or Other)	$	
d. Owner's Equity	$	
e. Private Lender's Loan	$	
Total Project Cost	$	
3. Type of Project (Check Only One):		
a. Loan for New Start Up Business	______	
b. Loan for Existing Business Expansion	______	
c. Loan for Existing Business Preservation/Job Retention	______	
d. Real Estate Development Project	______	
e. Off-site Infrastructure for a Development Project	______	
4. Meeting A CDBG National Objective:	**Yes**	**No**
a. For Micro Loan, Business is Documented as a Micro		
b. For Micro Loan, Owner is Documented as TIG		
If Micro then skip to # Six and Continue Micro Loan Review Below.		

c. Documentation of Elimination of Slums or Blight (Attach map showing project is in RDA area or attach proper HUD survey and resolution documenting blight)		
If Slums & Blight Verified, then Skip d. and e. and Continue Review Below At Number 5.		
d. Proposed # of TIG Jobs created	# ____ FTE	
e. **Or** Proposed # of TIG Jobs Retained	# ____ FTE	
Percentage of TIG Jobs Created/Retained (must be at least 51% of total jobs created/retained):	**__________Percent (4.d/5.a OR 4.e/5b)**	
5. Public Benefit Documentation:		
a. Total # of Jobs to be Created	# ____ FTE	
b. Total # of Jobs to be Retained	# ____ FTE	
c. Does the Total # of Jobs Support CDBG Loan Amount	____ Yes	____ No
6. Is there a Conflict of Interest? (Do any owners of business also work with loan program/jurisdiction?):	____ Yes	____ No
7. Copy of Loan Approval Memo Attached:	____ Yes	____ No

Part Two: Loan Underwriting Compliance with Current Program Guidelines <u>and</u> HUD Standards

Date of Most Recent Program Guideline Approval:		
1. Compliance with Local Program Guidelines : (Check and Attach Docs As Needed)	**Yes**	**No**
a. Full Project Description		
b. Documentation of Site Control for Project		
c. Description of Each Part of Project CDBG will Fund		
d. Detailed Sources and Uses for Project		
e. Credit Report Review - Business/Owners/Developers		
f. Tax Returns for Business/Owner/Developer		
g. Debt Coverage Ratio		
h. Collateral Valuation – Loan To Value Ratio		
i. Loan Term and Interest Rate		
j. **Electronic Excel Files** of Pro formas and Profit and Loss Statements. Pro forma must show with and without CDBG funds invested and must show ROI.		
k. Special Funding Conditions (list and describe each)		
2. Compliance with HUD Underwriting Standards:	**Yes**	**No**
a. **<u>Required</u>** Documentation of Cost Reasonableness (third party cost estimates)		
b. **<u>Required</u>** Documentation that all sources of funds are committed (third party loan approval letters and documentation)		
c. **<u>Required</u>** Documentation that project is financially		

viable (If CDBG funds are invested will projected profits allow for job creation. Does a market study show demand?)		
d. Document that, **to extent practicable**, no Undue Enrichment (no excess rate of return on owners investment)		
	Yes	**No**
e. Documentation that, **to extent practicable**, CDBG funds will not be substituted for non-federal sources of funding (show the owner is not able fund activities solely with other financing).		
f. Documentation that, **to extent practicable**, CDBG funds will be disbursed on a pro rata basis with other financing. (typically via a loan agreement)		
3. Copy of Loan Application with Information on Business Location and Owners/ Developers:		
b. Map with Location of Business		
4. Employment Agreement to Hold Business Responsible for Job Creation and TIG Certifications:		
5. For Oversized or New Off-site Infrastructure Projects in Support of a Business:		
a. Map with Location of Business that are being assisted and those parcels that may benefit in the future.		
b. Fair Share Agreement to hold future businesses responsible for costs of improvements made with CDBG funding.		
c. If meeting Slums or Blight National Objective, document that the project addresses slums or blight on an area basis or spot basis as defined by HUD. d. If meeting TIG Benefit National Objective, have system to verify that businesses benefiting from the infrastructure improvements develop one job for each $10,000 in CDBG assistance provided. These jobs must be tracked up to the date one year after physical completion of the infrastructure improvements.		

CDBG Reviewed/Approved:_______________ **Date:**____________________

EMPLOYEE SELF-CERTIFICATION FORM FOR FAMILY INCOME
County of Placer

The information you provide regarding your family income will assist your employer in meeting State requirements for a business loan program. The information is confidential, but may require verification.

1. On the chart below, locate the number of persons in your household in the gray line. Then, look below in the SAME column and CIRCLE the income range for your family for the past 12 months. Use the total gross income (before taxes) of all household members who are 18 years of age and older.

	Number of Persons in Household							
	1	2	3	4	5	6	7	8
Household Income	$0 - $16,000	$0 - $18,300	$0 - $20,600	$0 - $22,850	$0 - $24,700	$0 - $26,550	$0 - $28,350	$0 - $30,200
Household Income	$16,001- $26,650	$18,301- $30,450	$20,601- $34,250	$22,851 - $38,050	$24,701- $41,100	$26,551- $44,150	$28,351 -$47,200	$30,201 - $50,250
Household Income	$26,651- $31,980	$30,451- $36,540	$34,251- $41,100	$38,051 - $45,660	$41,101- $49,320	$44,151- $52,980	$47,201 -$56,640	$50,251 - $60,300
Household Income	Over $39,981	Over $36,541	Over $41,101	Over $45,661	Over $49,321	Over $52,981	Over $56,641	Over $60,301

Source: HCD Table of 2011 Income Limits. Effective July 13, 2011

2. How many hours do you work each week? _________ hours per week
3. Head of household is: Male ☐ Female ☐
4. Is the head of household over 62 years of age? .... Yes ☐ No ☐
5. Is the head of household disabled? .... Yes ☐ No ☐
6. Were you unemployed before starting this job? .... Yes ☐ No ☐
7. Does this job provide employer sponsored healthcare benefits? .... Yes ☐ No ☐
8. Check the ethnicity of head of household
9. Check the race of head of household:

Hispanic ☐ Not Hispanic ☐

White ☐ AfricanAmerican/Black ☐ Asian ☐

Alaska Native/American Indian ☐ Native Hawaiian/Pacific Islander ☐ Asian & White ☐

American Indian & White ☐ AfricanAm./Black & White ☐ Other Multiracial ☐

Income Verification

I certify that this income information is correct. I understand that the information I have provided on my family income is subject to verification by authorized representatives of the County of Lake and the State of California Department of Housing and Community Development.

Signature ______________________________ Date ______________

Printed Name ____________________________

CDS 1/18/12

CDBG BUSINESS LOAN SERVICING POLICIES

Loan Servicing

The Program Administrator will perform loan collection and servicing activities on all County loans as follows:

a. Issue monthly invoices for collection of monthly payments; Issuing annual coupon books and collecting monthly payments.
b. Issue payments to County on a monthly basis for all payments collected; Issuing monthly payments to the County for all payments collected.
c. Issue a monthly statement reflecting the current status of all loans; A monthly Loan Status Report will be given to the County listing all open loans and payment status.
d. Provide a schedule/procedure for reporting delinquent loans and pursuing corrective action; Monitoring payments and taking delinquency action as follows:
   15-30 days: call client
   30-45 days: call client and site visit
   45-60 days: send letter by regular and certified mail
   Over 60 days: Meet with County staff to arrange workout procedure.
e. Issue an IRS form 1098 to borrowers at the end of the year showing interest paid to County for loans secured by real estate; issue a statement to borrowers showing interest paid to County for loans not secured by real estate. Issuing IRS Form 1098 to borrower at end of year showing interest paid.
f. Administrator will monitor and maintain current UCC filings and insurance certificates on the loan collateral, and release the collateral when the loan is paid off.

Tracking and Monitoring

a. The Administrator will routinely maintain loan files and perform required post loan funding tasks including (a) monitoring of on-going viability of the borrower, including recommendations for action if necessary; (b) monitoring and documentation of job creation/retention as required; and (c) periodic site visits (at least once per year) to verify availability and condition of collateral, examine business records and procedures, and offer assistance.
b. Administrator will monitor labor standards as applicable in accordance with HCD CDBG requirements.
c. Administrator will work with HCD staff to make the necessary preparations and assist County staff to insure the close out occurs properly. Administrator will prepare in advance of the actual monitoring by providing accurate and complete documentation in accordance with HCD standards. Administrator will identify and correct any gaps and assist in scheduling the monitoring. Administrator will be present during the monitoring. Administrator will draft any follow up or response information needed as a result of the monitoring.

Employment Projection Form

NOTE: This form must be filled out for each business and signed by an authorized business representative.

PART I

1. Company Name __________________________

2. Current number of employees as of date of application ☐ Full-time (min 1750 hrs annually) ☐ Part-time (min 438 hrs annually)

3. Job information for newly created (net new) jobs:

Classification of Jobs (Job Category)	[illegible] Net New Jobs FT	PT	Annual Wages	# of Low Income Jobs	[illegible] Net New Jobs FT	PT	Annual Wages	# of Low Income Jobs	[illegible] Net New Jobs FT	PT	Annual Wages	# of Low Income Jobs
TOTAL FTEs:					0	0			0	0		

4. Number of "full-time equivalent" jobs ☐ 0   Loan Amount ☐   Dollars per job ☐ (Loan Amoun Jobs)

A full-time equivalent job is one full-time job (minimum 1,750 hours per year) or four part-time jobs that equal a minimum of 1,750 hours per year.

5. __________________________

Signature of Business Principle   Date: ____________ Telephone

<u>Directions for Completing Form:</u>

Fill in job classifications for **EACH** new position to be created or added to. Indicate if position will have one or more full time or part time workers added to it.
Indicate the number of low income persons projected under that position.
Complete the form for each of the three years indicated to show when the proper number of new FTE jobs will be created.
Have principle sign and date the form.

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